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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FILED

Clerk of the Superior Court

DEC 05 2008

By: J. JOHNSON, Deputy

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. Maureen F. Gorsen, Director,
California Department of Toxic
Substances Control,

Plaintiff.

v.

KYOCERA AMERICA, INC., and
DOES 1-10

Defendants.

37-2007-00074954-CU-MC-CTL

**STIPULATION FOR ENTRY OF FINAL
CONSENT JUDGMENT AND
INJUNCTION**

Plaintiff, the People of the State of California, ex rel. Maureen F. Gorsen, Director of
the California Department of Toxic Substances Control ("Department"), and Defendant Kyocera
America, Inc. ("Kyocera"), pursuant to California Code of Civil Procedure section 664.6, enter
into this Stipulation for Entry of Final Judgment and Injunction ("Stipulation") as follows:

1 1. INTRODUCTION

2 On September 13, 2007, Plaintiff, the People of the State of California, ex rel.
3 Maureen F. Gorsen, Director of the California Department of Toxic Substances Control, filed a
4 Complaint for Civil Penalties and Injunctive Relief ("Complaint") against Kyocera alleging
5 violations of the California Hazardous Waste Control Law ("HWCL"), California Health and
6 Safety Code sections 25100 et seq. A copy of the Complaint is attached hereto as Exhibit "A."

7 2. KYOCERA

8 Kyocera is a California corporation, organized in the State of California. The
9 Department contends that Kyocera is a "person" as defined by Health and Safety Code section
10 25118 and a "generator" and an "owner or operator" as defined by California Code of
11 Regulations, title 22, section 66260.10. Kyocera, at all times referenced in the Complaint, owns
12 and operates a manufacturing and electroplating facility located at 8611 Balboa Avenue, San
13 Diego, California ("Facility"). Kyocera designs, manufactures, and assembles a broad range of
14 microelectronic parts for the telecommunications and semiconductor markets.

15 3. ALLEGED HAZARDOUS WASTE CONTROL LAW VIOLATIONS

16 Between May 19, 2003, October 16, 2003 through October 17, 2003, and June 21,
17 2005 through June 28, 2005, representatives of the Department conducted on-site inspections of
18 the Facility. Department representatives also conducted follow-up meetings with Kyocera's
19 representatives at the Facility between December 2006 and January 2007. The Department
20 contends that during the course of and subsequent to the Facility inspections, the Department
21 identified various HWCL violations as alleged in the Complaint (Exhibit A), paragraphs 28
22 through 188.

23 4. JURISDICTION AND VENUE.

24 For purposes of this Stipulation and the Final Consent Judgment and Injunction
25 ("Judgment," attached hereto as Exhibit "B"), the parties stipulate that the Superior Court of San
26 Diego County ("Court") has jurisdiction over the above-captioned matter pursuant to Health and
27 Safety Code sections 25181, 25189 and 25189.2. The parties also stipulate that venue is proper in
28 the County of San Diego pursuant to Health and Safety Code section 25183 and that this Court

has jurisdiction to enter the Judgment, referenced in paragraph 7 below, as a full and final resolution of this matter.

5. DEFINITIONS

The Hazardous Waste Control Law terms used in this Stipulation are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided herein.

6. WAIVER OF HEARING

Kyocera waives any right to a judicial hearing in this matter prior to the entry of the Judgment.

7. SCOPE OF SETTLEMENT

The Department and Kyocera, as parties to this Stipulation, enter into the Stipulation pursuant to a compromise and settlement by mutually consenting to the entry by the Court of the Judgment. The Stipulation and the Judgment were negotiated in good faith and at arms' length by the parties to avoid expensive and protracted litigation regarding the alleged violations. The Department and Kyocera have agreed to resolve the Department's HWCL claims against Kyocera by mutually consenting to the entry of a Judgment (Exhibit B) against Kyocera by the Court. This Stipulation and the approval and entry by the Court of the Judgment shall constitute a full, final, and binding settlement of the following alleged violations: (a) all violations alleged in the Complaint; (b) all violations identified in the Summaries of Violations ("SOVs") and Facility inspection reports issued to Kyocera during or subsequent to the Facility inspections and follow-up visits conducted by the Department in May 2003, October 2003, June 2005, December 2006 and January 2007; and (c) all violations identified in the reports dated July 2, 2007 and August 14, 2008, issued to Kyocera by the Department.

7.1. Kyocera represents that there are no other known existing statutory, regulatory, or permit violations at the Facility. This Stipulation and the Judgment shall not settle any other alleged violations or restrict in any way the Department from taking appropriate enforcement action concerning any violations not identified in paragraph 7 above, including any violations that exist and/or are identified by the Department after the effective date of this Stipulation.

1 7.2. Except as provided in paragraph 7 above, nothing in the Stipulation or the
2 Judgment is intended nor shall they be construed to preclude the Department or any other State
3 agency, department, board, or entity from taking appropriate enforcement actions or otherwise
4 exercising its authority under any law, statute or regulation.

5 8. INTERIM AUTHORIZATION

6 The onsite treatment of cyanide bearing hazardous wastes without a permit or other
7 grant of authorization from the Department is a violation of Health and Safety Code section
8 25201. As part of this negotiated settlement between the parties, Kyocera has agreed to apply for
9 a Standardized Hazardous Waste Treatment Permit ("Permit Application") from the Department
10 in order to obtain a determination from the Department regarding the level of authorization, if
11 any, that is required by law to conduct the treatment activities referenced in Attachment "1" to the
12 proposed Judgment. The processing of the Permit Application and related discussions are
13 referred to here as the "Permit Application Process."

14 8.1. As part of the Stipulation, Judgment and the Permit Application Process, the
15 Department will temporarily authorize Kyocera to conduct the specified treatment activities of the
16 hazardous wastes identified in Attachment 1 to the Judgment. Although the Department asserts
17 that the materials identified in Attachment 1 to the Judgment are "hazardous wastes," Kyocera
18 does not waive any contention that the materials identified therein may be subject to any
19 exemption(s) or exclusion(s) from the definition of, or regulation as, "hazardous wastes" pursuant
20 to Health and Safety Code section 25143.2(c)(2), or any other applicable law. However, for
21 purposes of entering into this Stipulation and consenting to the entry of the Judgment, Kyocera
22 agrees to manage the materials identified in Attachment 1 to the Judgment as "hazardous wastes"
23 during the interim authorization period as herein provided and as required by all applicable
24 federal, state, and local requirements related to the handling and/or management of hazardous
25 materials and hazardous wastes.

26 8.2. The interim authorization provided pursuant to this Stipulation shall become
27 effective upon entry of the Judgment by the Court. The Department's interim authorization is
28 limited to the hazardous wastes and treatment methods as identified in Attachment 1 to the

1 Judgment. Other than the hazardous wastes identified in Attachment 1 to the Judgment, and
2 except as provided in paragraph 8.6 below, Kyocera shall not, at any time, treat, in any way, any
3 other hazardous waste, including, but not limited to, non-aqueous (solid, semisolid, or sludge-
4 like) cyanide hazardous wastes.

5 8.3. During the interim authorization period as herein provided, Kyocera shall,
6 without any exception, comply with all applicable federal, state, and local requirements related to
7 the handling of hazardous materials and hazardous wastes. These requirements shall include, but
8 not be limited to, all hazardous waste requirements regarding the identification, characterization,
9 labeling, storage, handling, treatment, or disposal of hazardous wastes as provided by federal and
10 state law.

11 8.4. If, at any time during the interim authorization period as provided herein
12 Kyocera seeks to obtain treatment authorization for any eligible cyanide bearing hazardous
13 wastes and treatment method as approved pursuant to the Department's Permit By Rule (PBR)
14 authorization tier, Kyocera shall, within ten (10) calendar days after submitting the required PBR
15 notification to the County of San Diego Department of Environmental Health, Hazardous
16 Materials Division (hereinafter referred to as the "San Diego County Certified Unified Program
17 Agency" or "San Diego County CUPA"), notify the Department in writing of such PBR
18 notification.

19 8.5. If, after the issuance of a final permit decision by the Department as provided
20 by the Judgment, a Standardized Hazardous Waste Treatment Permit or other form of
21 authorization is granted by the Department to Kyocera for the materials and activities that are
22 identified in Attachment 1 to the Judgment, Kyocera shall, upon approval of the final permit or
23 other authorization, comply with all permit or other authorization requirements as required by
24 law. Kyocera does not waive any right provided by law to appeal a final permit decision by the
25 Department. All interim authorization requirements imposed upon Kyocera pursuant to this
26 Stipulation and the Judgment, or pursuant to applicable federal and state law, shall remain in
27 effect pending the entire period of interim authorization as provided in paragraphs 8.7 through
28 8.11 below.

1 8.6. If Kyocera proposes to treat any other hazardous waste or employ any other
2 hazardous waste treatment method or procedure (a) not identified in Attachment 1 to the
3 Judgment, or (b) not then currently authorized under "Permit-By-Rule," "Conditionally
4 Authorized," or "Conditionally Exempt" authorization tiers, Kyocera shall apply for and obtain
5 written approval from the Department prior to conducting such treatment.

6 8.7. The interim authorization provided herein shall remain in effect for eighteen
7 (18) months from the effective date of the interim authorization as provided in paragraph 8.2
8 above, unless the authorization is superseded by (a) the issuance of a final permit decision by the
9 Department denying Kyocera's Permit Application, or (b) the issuance of a final permit decision
10 by the Department granting Kyocera a Standardized Hazardous Waste Facility Permit, or other
11 form of authorization (including PBR authorization), or any of the conditions as set forth in
12 paragraphs 8.8, 8.9, 8.10, or 8.11 apply.

13 8.8. The Department may terminate this interim authorization at any time if the
14 Department determines that Kyocera has failed to comply with any of the interim authorization
15 conditions or requirements imposed under paragraph 8 through 8.12. The interim authorization
16 granted herein shall not prevent the Department from adopting or amending regulations that
17 impose additional or more stringent requirements than those identified herein and does not
18 prevent the enforcement of those requirements against Kyocera. The issuance of this interim
19 authorization to Kyocera does not convey any property rights of any sort, or any exclusive
20 privilege, nor does it authorize any injury to persons or property or invasion of other private
21 rights, or any infringement of federal, state, or local laws or regulations. The interim
22 authorization shall not be transferable to any other person or entity.

23 8.9. The term of the interim authorization provided above may be extended by
24 written request by Kyocera and written approval from the Department as herein provided.
25 Kyocera shall demonstrate that: (a) it has made suitable progress and has continued to cooperate
26 with the Department toward obtaining the required permit(s), and (2) it has maintained
27 compliance with any other terms or conditions, as authorized by law, that the Department deems
28 necessary in order to protect human health, safety, or the environment. If, in the Department's

1 sole determination, the Department finds that Kyocera has established good cause for an
2 extension, the Department will grant an extension of the initial 18-month interim authorization
3 period and will specify in writing the extended term for interim authorization.

4 8.10. If the Department determines that Kyocera has failed to comply with the terms
5 for interim authorization as herein provided, the Department shall so notify Kyocera in writing.
6 Upon receiving such notification, Kyocera shall, in consultation with the Department, work
7 diligently and in good faith to correct the alleged non-compliance within thirty (30) calendar days
8 from the issuance of the Department's written notification. The Department, in its sole discretion,
9 may grant Kyocera more time to correct the alleged non-compliance. Unless Kyocera has timely
10 cured an alleged non-compliance as provided in paragraph 8.11 below, Kyocera shall, within
11 thirty (30) calendar days from the issuance of the written notice, cease all non compliant
12 hazardous waste treatment activities which are specified in the Department's written notice.

13 8.11. If, during or at the end of the thirty day period provided in paragraph 8.10
14 above, the Department determines, in its sole discretion, that Kyocera has satisfactorily cured an
15 alleged non-compliance of the requirements for interim authorization, the Department will notify
16 Kyocera of such determination in writing and shall not require Kyocera to proceed with the
17 termination of hazardous waste treatment activities specified in the Department's notice and
18 required pursuant to paragraph 8.10.

19 8.12. Nothing in this Stipulation or Judgment shall relieve Kyocera of the
20 responsibility to comply with any requirements of the San Diego Regional Water Quality Control
21 Board, including, but not limited to, waste discharge requirements, or any requirements of the
22 City and County of San Diego. This Stipulation also does not limit or control other hazardous
23 material management requirements that may be applicable under the auspices of the San Diego
24 County CUPA related to management of hazardous materials.

25 9. SUBMITTALS AND NOTICES

26 All correspondence, decisions, approvals, submittals and notices required by this
27 Stipulation or the Judgment shall be sent simultaneously to:
28

1 DEPARTMENT:

2 Charles A. McLaughlin, Chief
3 State Oversight and Enforcement Branch
4 Enforcement and Emergency Response Program
5 Department of Toxic Substances Control
6 8800 Cal Center Drive, 3rd Floor
7 Sacramento, California 95826-3200

8 Maria Soria, Section Chief
9 State Oversight and Enforcement Branch
10 Enforcement and Emergency Response Program
11 Department of Toxic Substances Control
12 700 Heinz Avenue, Suite 200
13 Berkeley, California 94710-2721

14 Permit Application Matters:

15 Farshad Vakilli
16 Hazardous Waste Management Permitting
17 Department of Toxic Substances Control
18 8800 Cal Center Drive, 3rd Floor
19 Sacramento, California 95826-3200

20 San Diego County CUPA

21 Michael Vizzier, Chief
22 County of San Diego
23 Department of Environmental Health
24 Hazardous Materials Division
25 P.O. Box 129261
26 San Diego, California 92112-2377

27 KYOCERA

28 Mr. Eiji Tanaka
Kyocera America, Inc.
8611 Balboa Avenue
San Diego, California 92123

Eric Klein, Esq.
Kyocera International, Inc.
8611 Balboa Avenue
San Diego, California 92123

And to:

Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, California 94612

10. COMMUNICATIONS

All approvals and decisions of the Department made regarding any submittals and notifications required by this Stipulation or the Judgment shall be communicated to Kyocera as provided above in writing by the Department, or its designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Kyocera shall be construed to relieve Kyocera of its obligation to obtain such formal approvals as may be required.

11. DEPARTMENT REVIEW AND APPROVAL

If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Stipulation or the Judgment fails to comply with this Stipulation or the Judgment or fails to protect public health or safety or the environment, the Department may return the document(s) to Kyocera with recommended changes and a date by which Kyocera must submit to the Department a revised document incorporating the recommended changes.

12. COMPLIANCE WITH APPLICABLE LAWS

Kyocera shall carry out this Stipulation and the Judgment in compliance with all local, state, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

13. ENDANGERMENT DURING IMPLEMENTATION

If the Department determines that any circumstance(s) or activity (whether or not pursued in compliance with this Stipulation or the Judgment) are creating an imminent or substantial endangerment to the health or welfare of people at the Facility or in the surrounding area or to the environment, the Department may order Kyocera to stop further implementation of this Stipulation or Judgment for such period of time as needed to abate the endangerment. Any deadline in this Stipulation or the Judgment affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

1 14. LIABILITY

2 Nothing in this Stipulation or the Judgment shall constitute or be construed as a
3 satisfaction or release from liability for any conditions or claims arising as a result of past,
4 current, or future operations of Kyocera except as provided in this Stipulation and the Judgment.
5 Notwithstanding compliance with the terms of this Stipulation or the Judgment, the Kyocera may
6 be required to take further actions as are necessary to protect public health or welfare or the
7 environment.

8 15. FACILITY ACCESS

9 Access to the Facility shall be provided, as required by law, to employees,
10 contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in
11 this Stipulation or the Judgment is intended to limit in any way the right of entry or inspection
12 that the Department or any other agency may otherwise have by operation of any law, or the
13 rights of Kyocera relating to any such attempted entry or inspection.

14 16. SAMPLING, DATA and DOCUMENT AVAILABILITY

15 Kyocera shall permit the Department and its authorized representatives to inspect and
16 copy all sampling, testing, monitoring, and other data generated by Kyocera, or on Kyocera's
17 behalf, pertaining to work undertaken pursuant to this Stipulation or the Judgment. Nothing in
18 this Stipulation shall be construed to require any party to waive any privilege. However, the
19 assertion of any privilege shall not relieve any party of its obligations under this Stipulation or the
20 Judgment. If requested in advance by the Department, Kyocera shall allow the Department and
21 its authorized representatives to take duplicates of any samples collected by, or on behalf of,
22 Kyocera pursuant to this Stipulation or the Judgment. Kyocera shall maintain a central depository
23 of the data, reports, and other documents prepared pursuant to this Stipulation and the Judgment.
24 All such data, reports, and other documents shall be preserved by Kyocera for a minimum of
25 three (3) years after the conclusion of all activities under this Stipulation and the Judgment, or for
26 a longer period of time as required by California Code of Regulations, title 22, section 66262.40.
27 If the Department requests that some or all of these documents be preserved for a longer period of
28 time, Kyocera shall either comply with that request, deliver the documents to the Department, or

1 permit the Department to copy the documents prior to destruction. Kyocera shall notify the
2 Department in writing at least six months prior to destroying any documents prepared pursuant to
3 this Stipulation or the Judgment.

4 17. GOVERNMENT LIABILITIES

5 The State of California, including but not limited to the Department, shall not be
6 liable for injuries or damages to persons or property resulting from acts or omissions by Kyocera,
7 or related parties specified in paragraph 22, in carrying out activities pursuant to this Stipulation
8 or the Judgment, nor shall the State of California be held as a party to any contract entered into by
9 Kyocera or its agents in carrying out activities pursuant to this Stipulation or the Judgment.

10 18. INCORPORATION OF PLANS AND REPORTS

11 All plans, schedules, and reports that require Department approval and are submitted
12 by Kyocera pursuant to this Stipulation or the Judgment are incorporated in this Stipulation upon
13 approval by the Department.

14 19. EXTENSION REQUESTS

15 If Kyocera is unable to perform any activity or submit any document within the time
16 required under this Stipulation or the Judgment, Kyocera may, prior to expiration of the time,
17 request an extension of time in writing. The extension request shall include a justification for the
18 delay.

19 20. EXTENSION APPROVALS

20 If the Department determines that good cause exists for an extension, it will grant the
21 request and specify in writing a new compliance schedule.

22 21. ADDITIONAL ENFORCEMENT ACTIONS

23 The Department reserves the right to take any further enforcement action concerning
24 any violation of law not specifically settled pursuant to this Stipulation and the Judgment.

1 22. PARTIES BOUND

2 This Stipulation and the Judgment shall apply to and be binding upon Kyocera and
3 any successor entity, and upon the Department and any successor agency of the Department that
4 may have responsibility for and jurisdiction over the subject matter of this Stipulation and the
5 Judgment.

6 23. ENTIRE AGREEMENT

7 This Stipulation and the Judgment comprise the entire agreement and understanding
8 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments and understandings related hereto. No representations, oral or
10 otherwise, express or implied, other than those contained herein have been made by any party
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
12 deemed to exist or to bind any of the parties.

13 24. AUTHORIZATION TO SETTLE THIS MATTER

14 Each signatory to this Stipulation certifies that he or she is fully authorized by the
15 party he or she represents to enter into this Stipulation on behalf of the party represented and
16 legally to bind that party.

17 25. MODIFICATION

18 This Stipulation may be modified from time to time by express written agreement of
19 the parties and in accordance with law.

20 26. ENTRY OF FINAL JUDGMENT REQUIRED

21 The Judgment shall be null and void, and be without any force or effect, unless
22 entered by the Court in this matter. If the Judgment is not entered by the Court, the execution of
23 this Stipulation by Kyocera and the Department shall not be construed as an admission by
24 Kyocera or the Department of any fact, conclusion of law, issue of law, or violation of law.

25 27. GOVERNING LAW

26 The terms of this Stipulation and the Judgment shall be governed by the laws of the
27 State of California.

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28. COUNTERPARTS AND FACSIMILE

This Stipulation may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

29. EFFECTIVE DATE

The effective date of this Stipulation is the date it is signed by the Department's representative.

APPROVALS OF THE PARTIES

IT IS SO AGREED:

DATED: 12/4/08

PLAINTIFF DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

By: Susan Jane Loney for Gale Filter
Gale Filter, Deputy Director
Enforcement & Emergency Response Program
California Department of Toxic Substances Control

DATED: _____

DEFENDANT KYOCERA AMERICA, INC.

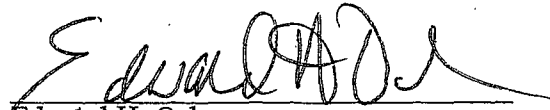
NAME OF REPRESENTATIVE

TITLE OF REPRESENTATIVE

1 APPROVED AS TO FORM:

2 Dated: 12-5-08

EDMUND G. BROWN JR., Attorney General
MATT RODRIQUEZ
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General
TIMOTHY R. PATTERSON
Supervising Deputy Attorney General

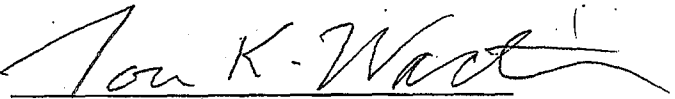
7 

8 Edward H. Ochoa
9 Deputy Attorney General

10 Attorneys for Plaintiffs, People of the State of
11 California, ex rel. Maureen F. Gorsen, Director,
California Department of Toxic Substances Control

12 Dated: 12.3.08

WACTOR & WICK, LLP

14 

15 Jon K. Wactor, Esq
16 Attorneys for Defendant
Kyocera America, Inc.

27 SD2005500361

EXHIBIT A

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SUPERIOR COURT
SAN DIEGO, CA

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2 TOM GREENE
Chief Assistant Attorney General
3 THEODORA BERGER
Senior Assistant Attorney General
4 TIMOTHY R. PATTERSON
Supervising Deputy Attorney General
5 EDWARD H. OCHOA (SBN 144842)
Deputy Attorney General
6 California Department of Justice
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7 San Diego, CA 92101
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8 Facsimile: (619) 645-2012

9 Attorneys for Plaintiff, People of the State of
California, ex rel. Maureen F. Gorsen, Director,
10 California Department of Toxic Substances Control

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SAN DIEGO

13 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. Maureen F. Gorsen, Director, California
14 Department of Toxic Substances Control,

Case No. 37-2007-00074954-CU-MC-CTL

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

15
16
17 Plaintiff,

(Health and Safety Code sections
25189 and 25189.2)

18 v.

19 KYOCERA AMERICA, INC., and
DOES 1-10,

20 Defendants.

21
22 Plaintiff, the People of the State of California, ex rel. Maureen F. Gorsen, Director
23 of the California Department of Toxic Substances Control alleges as follows:

24 PRELIMINARY STATEMENT

25 1. Plaintiff brings this action to address violations of the California Hazardous Waste
26 Control Law ("HWCL"), California Health and Safety Code sections 25100 *et seq.*, and of
27 certain regulations and requirements adopted and issued by Plaintiff pursuant to these state
28 statutes.

1 10. When the names of these defendants have been ascertained, Plaintiff will seek leave to
2 amend the Complaint to substitute the true name of each DOE defendant in place of the fictitious
3 name. Unless otherwise alleged, each reference in this Complaint to "defendant" or "defendants"
4 refers to all defendants named herein, including all defendants under fictitious names.

5 8. Plaintiff is informed and believes and thereon alleges that each defendant was the
6 officer, agent, employee, or representative of each of the remaining defendants, acting within the
7 course and scope of said agency, employment, or representation, and each defendant has ratified
8 and approved the actions of each of the other defendants alleged herein. When, in this
9 Complaint, reference is made to any act of defendants, such allegations shall be deemed to mean
10 that the officers, directors, agents, employees, representatives of said defendants carried out, or
11 authorized such acts, or recklessly or carelessly failed to adequately supervise, or control or direct
12 their employees or agents while engaged in the management, direction, operation, or control of
13 the affairs of said business or organization, and did so while acting within the course and scope
14 of said employment or agency.

15 JURISDICTION AND VENUE

16 9. The Superior Court has jurisdiction pursuant to Article VI, Section 10 of the
17 California Constitution, and California Health and Safety Code section 25181.

18 10. Venue is proper in this Court pursuant to California Health and Safety Code
19 section 25183, because San Diego County is the county in which the alleged violations of law
20 occurred.

21 STATUTORY AND REGULATORY BACKGROUND

22 11. The State of California has enacted a comprehensive statutory and regulatory
23 framework for the generation, handling, treatment, transport and disposal of hazardous wastes.
24 The framework contained in the HWCL, and its implementing regulations, mandate a "cradle to
25 grave" registration, tracking, storage, treatment and disposal system for the protection of the
26 public from the risks posed by hazardous wastes.

27 12. California administers the HWCL in lieu of federal administration of the federal
28 Resource Conservation and Recovery Act ("RCRA"), which is codified at 42 United States Code

1 sections 6901 *et seq.*, pursuant to Health & Safety Code sections 25101(d) and 25159-25159.9.
2 Federal law prohibits California from imposing any requirements less stringent than those
3 authorized under RCRA. (42 U.S.C. § 6929.)

4 13. The HWCL charges the Department with the responsibility to adopt standards and
5 regulations for the management of hazardous waste to protect the public health and environment.
6 (Health & Saf. Code § 25150.) Accordingly, the Department has promulgated regulations setting
7 forth numerous and extensive health-protective requirements for the day-to-day operation of
8 hazardous waste generators, transporters, as well as owners and operators of hazardous waste
9 facilities. (See Cal. Code. Regs., tit. 22, § 66262.1 *et seq.*)

10 14. Health and Safety Code section 25124(a) defines a "'waste' [as] any solid, liquid,
11 semisolid, or contained gaseous discarded material that is not excluded by this chapter or by
12 regulations adopted pursuant to this chapter." (See also Cal. Code. Regs., tit. 22, § 66261.2.)
13 "Discarded materials" include any material that is relinquished, recycled or accumulated, stored,
14 or treated before recycling except as provided in Section 25143.2, poses a threat to public health
15 or the environment and is not timely and adequately labeled or not timely packaged in an
16 adequate container, or is considered inherently wastelike, as specified in regulations adopted by
17 the Department. (Health & Saf. Code § 25124(b).) A "waste" includes "spent material" that has
18 been used and as a result of contamination can no longer serve the purpose for which it was
19 produced without processing. (Cal. Code. Regs., tit. 22, § 66260.10.)

20 15. A "hazardous waste" is a waste that meets any of the criteria established by the
21 Department. (Health & Saf. Code §§ 25117 and 25141.) Those criteria consist of lists of
22 particular hazardous wastes, and characteristics of hazardous wastes.

23 16. The HWCL has a more inclusive definition of "hazardous waste" than does
24 federal law. Hazardous wastes that are regulated under California law but not federal law are
25 known as "non-RCRA hazardous wastes." (Health & Saf. Code § 25117.9.)

26 17. The HWCL, at Health and Safety Code section 25201(a), provides that an owner
27 or operator of a hazardous waste management facility may not "accept, treat, store, or dispose of
28 a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous

1 waste facilities permit or other grant of authorization from the Department to use and operate the
2 facility, area, or site”

3 18. A generator of hazardous waste may accumulate that hazardous waste
4 onsite for up to ninety (90) days without authorization provided that the generator complies with
5 certain requirements, including, but not limited to, the requirements specified in California Code
6 of Regulations, title 22, section 66262.34. (Health & Saf. Code § 25123.3(b).)

7 19. A person that generates a waste must determine if the waste is hazardous
8 using the methods outlined in California Code of Regulations, title 22, sections 66262.11, and
9 66260.200. If the waste is hazardous, the generator must manage it in accordance with the
10 regulations governing generators of hazardous wastes. (See Cal. Code. Regs., tit. 22, §§
11 66262.11(d) and 66260.200(c).)

12 20. A person who generates a hazardous waste is subject to the compliance
13 requirements and penalties prescribed in chapter 6.5 of division 20 of the Health and Safety Code
14 (commencing with section 25100) if the generator does not comply with the requirements
15 applicable to generators of hazardous waste. A generator who treats, stores, or disposes of
16 hazardous waste on-site shall also comply with the applicable standards and permit requirements
17 set forth in chapters 14, 15, 16, 18 and 20 of division 4.5, California Code of Regulations, title
18 22, section 66260.1 *et seq.* (Cal. Code. Regs., tit. 22, § 66262.10.)

19 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

20 21. The HWCL authorizes the Court to impose civil penalties under two distinct and
21 alternative provisions. Section 25189 of the Health and Safety Code creates liability for any
22 negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,
23 which creates liability for any violation of the HWCL. A person may not be held liable for a
24 civil penalty imposed under section 25189 and for a civil penalty imposed under section 25189.2
25 for the same act. (Health & Saf. Code § 25189.2(d).)

26 22. The HWCL, sections 25181 and 25184, authorize and direct the Court to enjoin
27 any ongoing or potential violation of the HWCL.

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1 23. Section 25181 of the Health and Safety Code provides that when the Department
2 determines that any person has engaged in, is engaged in, or is about to engage in any acts or
3 practices which constitute or will constitute a violation of any provision of the HWCL or any rule
4 or requirement issued or promulgated thereunder, and when requested by the Department, the
5 Attorney General may make application to the superior court for an order enjoining such acts or
6 practices, or for an order directing compliance, and upon a showing by the Department that such
7 person has engaged in or is about to engage in any such acts or practices, a permanent or
8 temporary injunction, restraining order, or other order may be granted.

9 24. Health and Safety Code section 25184 provides that in civil actions brought
10 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

11 "It shall not be necessary to allege or prove at any stage of the proceeding that irreparable
12 damage will occur should the temporary restraining order, preliminary injunction, or
13 permanent injunction not be issued; or that the remedy at law is inadequate, and the
14 temporary restraining order, preliminary injunction, or permanent injunction shall issue
15 without such allegations and without such proof."

16 **GENERAL ALLEGATIONS**

17 25. At all times relevant herein, defendants owned and/or operated a manufacturing
18 and electroplating facility located at 8611 Balboa Avenue, San Diego, California ("Facility").
19 Defendants design, manufacture, and assemble a broad range of microelectronic parts for the
20 telecommunications and semiconductor markets. Defendants generate hazardous wastes
21 including, but not limited to, the following: wastewater containing metals (copper, nickel, silver,
22 and gold), cyanide plating and stripping wastes, metal hydroxide sludge, spent cyanide and nickel
23 filters, acids, caustics and non-halogenated solvents. Prior to 1999, defendants were authorized
24 by the San Diego County Department of Environmental Health, Hazardous Materials Division,
25 Certified Unified Program Agency ("CUPA"), to operate a Fixed Treatment Unit ("FTU") to
26 conduct heavy metals removal and wastewater treatment.

27 26. Between October 16, 2003, through October 17, 2003, and June 21, 2005, through
28 June 28, 2005, representatives of the Department conducted on-site inspections of defendants'

1 Facility for compliance with the HWCL. The Department's representatives discovered violations
2 of the HWCL at defendants' Facility. At the conclusion of the inspections, the Department
3 provided defendants with a summary of violations. The Department subsequently provided
4 defendants with detailed inspection reports indicating the Department's findings for both
5 inspections. Department representatives also conducted follow-up meetings with defendants at
6 the Facility between December 2006 and January 2007.

7 27. The Department has incurred investigation costs to determine whether defendants
8 have been in compliance with the State's hazardous waste laws and regulations. The Department
9 has expended and will continue to expend State funds for such costs of investigation in order to
10 determine whether defendants are in compliance with the State's hazardous waste laws and
11 regulations and whether defendants are complying with any temporary restraining order or
12 preliminary or permanent injunction issued by the Court.

13 **FIRST CAUSE OF ACTION**

14 (Illegal Treatment of Hazardous Waste)

15 28. Paragraphs 1 through 27 above are incorporated by reference as though fully set
16 forth herein.

17 29. In relevant part, Health and Safety Code section 25201 provides that no owner or
18 operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or
19 disposal site shall treat a hazardous waste at the facility, area, or site, unless the owner or
20 operator holds a hazardous waste facilities permit or other authorization from the Department.

21 30. Health and Safety Code section 25123.5 defines "treatment" of a hazardous waste
22 as any method, technique or process designed to change the physical, chemical, or biological
23 character or composition of the hazardous waste.

24 31. Beginning on an undetermined date prior to October 16, 2003, and continuing
25 through at least June 2005, defendants treated the following hazardous wastes without a permit
26 or other authorization from the Department, at the Facility in violation of Health and Safety Code
27 section 25201:

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- 1 (a) Spent cyanide plating bath solutions from electroplating operations, a RCRA
2 listed hazardous waste (F007);
- 3 (b) Spent stripping and cleaning bath solutions from electroplating operations where
4 cyanides are used in the process, a RCRA listed hazardous waste (F009);
- 5 (c) Spent rinse wastewater containing cyanide;
- 6 (d) Metal hydroxide sludge, a RCRA listed hazardous waste (F006), treated in a dryer
7 via cold evaporation; and
- 8 (e) Rinsing and crushing of 55-gallon containers of hazardous materials and/or
9 hazardous waste.

10 32. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
11 civil penalties according to proof based on this intentional or negligent violation. In the
12 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
13 and Safety Code section 25189.2.

14 **SECOND CAUSE OF ACTION**

15 (Failure to Make a Hazardous Waste Determination)

16 33. Paragraphs 1 through 27 above are incorporated by reference as though fully set
17 forth herein.

18 34. In relevant part, California Code of Regulations, title 22, section 66262.11(b)
19 provides that a generator who generates a waste shall determine if the waste is listed as a
20 hazardous waste in division 4.5, chapter 11, articles 4 or 4.1, or in Appendix X of chapter 11. If
21 the waste is listed in Appendix X and is not listed in articles 4 or 4.1 of chapter 11, the generator
22 may determine that the waste from his particular facility or operation is not a hazardous waste by
23 either: (1) testing the waste according to the methods set forth in article 3 of chapter 11, or
24 according to an equivalent method approved by the Department pursuant to section 66260.21; or
25 (2) applying knowledge of the hazard characteristic of the waste in light of the materials or the
26 processes used and the characteristics set forth in article 3 of chapter 11.

27 35. In relevant part, California Code of Regulations, title 22, section 66262.11(c)
28 provides that if the waste is not listed as a hazardous waste in article 4, article 4.1, or in

1 Appendix X of chapter 11, the generator shall determine whether the waste exhibits any of the
2 characteristics set forth in article 3 of chapter 11 by either: (1) testing the waste according to the
3 methods set forth in article 3 of chapter 11, or according to an equivalent method approved by the
4 Department under section 66260.21; or (2) applying knowledge of the hazard characteristic of the
5 waste in light of the materials or the processes used.

6 36. Beginning on an undetermined date prior to prior to October 16, 2003, and
7 continuing through at least October 16, 2003, defendants failed to make a hazardous waste
8 determination for the following wastes in violation of California Code of Regulations, title 22,
9 section 66262.11(b) and section 66262.11(c):

10 (a) Spent sodium cyanide waste with sodium hydroxide used for stripping, a RCRA
11 listed hazardous waste (F009), that was improperly identified as corrosive waste "D002" and
12 shipped offsite for disposal;

13 (b) Spent potassium "ferric cyanide" waste used for stripping operations, a RCRA
14 listed hazardous waste (F009), that was improperly identified as "ferro cyanide" and corrosive
15 waste "D002" and shipped offsite;

16 (c) Spent cyanide filters, a RCRA listed hazardous waste (F006), that were managed
17 as non-RCRA waste with California waste code "711," and located by the compactor, a generator
18 area; and

19 (d) Spent Enstrip (trade name), a cyanide waste used for stripping of parts and racks
20 and a RCRA listed hazardous waste (F009).

21 37. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
22 civil penalties according to proof based on this intentional or negligent violation. In the
23 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
24 and Safety Code section 25189.2.

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1 unless the wastes have been exempted, granted a variance or granted an extension under this
2 chapter or pursuant to California Health and Safety Code sections 25179.8, 25179.9, 25179.10,
3 25179.11 and 25179.12, unless the wastes meet the applicable treatment standards specified
4 under article 4 and article 11 of this chapter, or 40 CFR part 268 or unless the wastes have a
5 treatment standard that has been repealed pursuant to Health and Safety Code section 25179.6.”

6 41. In relevant part, California Code of Regulations, title 22, section 66268.7(a)(1)
7 provides that “. . . a generator of hazardous waste shall determine if the waste has to be treated
8 before it can be land disposed. This is done by determining if the hazardous waste meets the
9 treatment standards in article 4 or article 11. This determination can be made in either of two
10 ways: testing the waste or using knowledge of the waste . . . ”

11 42. Beginning on an undetermined date prior to prior to October 16, 2003, and
12 continuing through at least May 2005, defendants failed to assess whether the following
13 hazardous wastes were subject to land disposal restrictions and/or whether applicable treatment
14 standards applied, in violation of Health and Safety Code section 25179.5 and California Code of
15 Regulations, title 22, section 66268.1 and section 66268.7(a)(1):

16 (a) Spent sodium cyanide waste with sodium hydroxide used for stripping, a RCRA
17 listed waste (F009), was identified as corrosive waste “D002” and shipped offsite for disposal;

18 (b) Spent potassium “ferric cyanide” waste used for stripping operations, a RCRA
19 listed waste (F009), was identified as corrosive “ferro cyanide,” another RCRA listed waste
20 (D002), and also identified as California waste code “122.”

21 (c) Spent cyanide filters, a RCRA listed waste (F008), were managed as non-RCRA
22 waste and identified as California waste (711).

23 (d) Metal hydroxide sludge, a RCRA listed hazardous waste (F006), was shipped to
24 World Resources Company for recycling and the hazardous waste did not meet the LDR
25 standards for F006.

26 43. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
27 civil penalties according to proof based on this intentional or negligent violation. In the

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1 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
2 and Safety Code section 25189.2.

3 **FOURTH CAUSE OF ACTION**

4 (Illegal Storage of Hazardous Wastes)

5 44. Paragraphs 1 through 27 above are incorporated by reference as though fully set
6 forth herein.

7 45. In relevant part, Health and Safety Code section 25201 provides that no owner or
8 operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or
9 disposal site shall store a hazardous waste at the facility, area, or site, unless the owner or
10 operator holds a hazardous waste facilities permit or other authorization from the Department.

11 46. In relevant part, California Code of Regulations, title 22, section 66262.34(a)
12 provides that a generator may accumulate hazardous waste on-site for 90 days or less without a
13 permit or grant of interim status, provided that the generator complies with certain requirements,
14 including, but not limited to, the requirements specified in California Code of Regulations, title
15 22, section 66262.34.

16 47. On or about October 16, 2003, defendants stored the following hazardous wastes
17 at the Facility for more than 90 days without obtaining a required hazardous waste storage permit
18 or other authorization from the Department in violation of Health and Safety Code section 25201
19 and California Code of Regulations, title 22, section 66262.34(a):

20 (a) Spent methanol was first accumulated in a 55-gallon containers for 90 days and
21 then pumped into a 275-gallon tank that was then marked with a new date of accumulation. The
22 initial date of accumulation on the containers was June 23, 2003 and the initial date of
23 accumulation on the 275-gallon tank was marked October 10, 2003. A manifest review indicated
24 that the spent methanol had been shipped offsite for disposal as a RCRA listed waste (F003).

25 (b) Four (4), 55-gallon containers with spent methanol were stored at the Facility with
26 March 2, 2003 as the initial date of accumulation.

27 (c) Three (3), 55-gallon containers with spent methanol were stored at the Facility
28 with May 1, 2003 as the initial date of accumulation.

(d) One (1), 55-gallon container with used oil was stored at the Facility with February 27, 2003 as the initial date of accumulation.

48. Pursuant to Health and Safety Code section 25189(b), defendants are liable for civil penalties according to proof based on this intentional or negligent violation. In the alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health and Safety Code section 25189.2.

FIFTH CAUSE OF ACTION

(Illegal Storage of Hazardous Wastes)

49. Paragraphs 1 through 27 above are incorporated by reference as though fully set forth herein.

50. In relevant part, Health and Safety Code section 25201 provides that no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall store a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other authorization from the Department.

51. In relevant part, California Code of Regulations, title 22, section 66262.34(a) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status, provided that the generator complies with certain requirements, including, but not limited to, the requirements specified in California Code of Regulations, title 22, section 66262.34.

52. On or about June 21, 2005, defendants stored the following hazardous wastes at the Facility for more than 90 days without obtaining a required hazardous waste storage permit or other authorization from the Department in violation of Health and Safety Code section 25201 and California Code of Regulations, title 22, section 66262.34(a):

(a) One (1), 55-gallon, blue, poly container with cyanide hazardous waste located in the North Reclaim room and marked with November 8, 2004 as the initial date of accumulation and labeled "From rack stripping to Ionet, 4 Hot water."

(b) Metal hydroxide sludge, a RCRA listed waste code (F006), was stored beyond 90 days on five occasions during 2003, 2004, and 2005, as per defendants' hazardous waste

1 manifests, numbers 99694524, 99694526, 99694525, 22831554, 23609843, 23609847, and
2 23609846.

3 53. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
4 civil penalties according to proof based on this intentional or negligent violation. In the
5 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
6 and Safety Code section 25189.2.

7 **SIXTH CAUSE OF ACTION**

8 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

9 54. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
10 forth herein.

11 55. In relevant part, California Code of Regulations, title 22, section 66262.34(f)
12 provides that generators who accumulate hazardous waste on site without a permit or grant of
13 interim status shall comply with the Department's labeling requirements as set forth in said
14 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous
15 waste on site without a permit or grant of interim status shall comply with the following
16 requirements: (1) the date upon which each period of accumulation begins shall be clearly
17 marked and visible for inspection on each container and portable tank; (2) the date the applicable
18 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of
19 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each
20 container and tank; and (3) each container and tank used for onsite accumulation of hazardous
21 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all
22 containers and portable tanks shall be labeled with the following information: (A) composition
23 and physical state of the wastes; (B) statement or statements which call attention to the particular
24 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the
25 person producing the waste.

26 56. Beginning on an undetermined date prior to October 16, 2003, and continuing
27 through at least October 17, 2003, defendants failed to properly label approximately fifty (50),
28 55-gallon containers and tanks with spent aqueous waste containing cyanide with the words

1 "hazardous waste" and failed to identify on the labels the hazardous properties and composition
2 of the wastes in violation of California Code of Regulations, title 22, section 66262.34(f). These
3 containers and tanks were located in the Facility's manual plating room, gold recovery room
4 (North Reclaim room), the generator area, and the Chem pad area, and were improperly labeled
5 as "Excluded Recyclable Material."

6 57. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
7 civil penalties according to proof based on this intentional or negligent violation. In the
8 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
9 and Safety Code section 25189.2.

10 SEVENTH CAUSE OF ACTION

11 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

12 58. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
13 forth herein.

14 59. In relevant part, California Code of Regulations, title 22, section 66262.34(f)
15 provides that generators who accumulate hazardous waste on site without a permit or grant of
16 interim status shall comply with the Department's labeling requirements as set forth in said
17 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous
18 waste on site without a permit or grant of interim status shall comply with the following
19 requirements: (1) the date upon which each period of accumulation begins shall be clearly
20 marked and visible for inspection on each container and portable tank; (2) the date the applicable
21 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of
22 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each
23 container and tank; and (3) each container and tank used for onsite accumulation of hazardous
24 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all
25 containers and portable tanks shall be labeled with the following information: (A) composition
26 and physical state of the wastes; (B) statement or statements which call attention to the particular
27 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the
28 person producing the waste.

1 60. Beginning on an undetermined date prior to June 21, 2005, and continuing
2 through at least June 21, 2005, defendants failed to properly label approximately twenty-eight
3 (28), 55-gallon hazardous waste containers, two (2) portable tanks with hazardous waste, and one
4 hopper containing metal hydroxide sludge, with the words "hazardous waste" and failed to
5 identify on the labels the hazardous properties and composition of the wastes in violation of
6 California Code of Regulations, title 22, section 66262.34(f). These containers and tanks were
7 located in the Facility's manual plating room, gold recovery room (North Reclaim room), the
8 generator area, and the Chem pad area, and were improperly labeled as "Excluded Recyclable
9 Material."

10 61. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
11 civil penalties according to proof based on this intentional or negligent violation. In the
12 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
13 and Safety Code section 25189.2.

14 **EIGHTH CAUSE OF ACTION**

15 (Failure to Comply with Documentation Requirements

16 Applicable to Conditionally Exempt Recyclable Hazardous Wastes)

17 62. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
18 forth herein.

19 63. In relevant part, Health and Safety Code section 25143.2(f) provides that "(1) Any
20 person who manages a recyclable material under a claim that the material qualifies for exclusion
21 or exemption pursuant to this section shall provide, upon request, to the department, the
22 California Environmental Protection Agency, or any local agency or official authorized to bring
23 an action as provided in Section 25180, all of the following information: (A) The name, street
24 and mailing address, and telephone number of the owner or operator of any facility that manages
25 the material. (B) Any other information related to the management by that person of the material
26 requested by the department, the California Environmental Protection Agency, or the authorized
27 local agency or official. (2) Any person claiming an exclusion or an exemption pursuant to this
28 section shall maintain adequate records to demonstrate to the satisfaction of the requesting

1 agency or official that there is a known market or disposition for the material, and that the
2 requirements of any exemption or exclusion pursuant to this section are met. (3) For purposes of
3 determining that the conditions for exclusion from classification as a waste pursuant to this
4 section are met, any person, facility, site, or vehicle engaged in the management of a material
5 under a claim that the material is excluded from classification as a waste pursuant to this section
6 is subject to Section 25185."

7 64. In relevant part, Health and Safety Code section 25143.10(a) provides that
8 "[e]xcept as provided in subdivisions (e) and (f), any person who recycles more than 100
9 kilograms per month of recyclable material under a claim that the material qualifies for exclusion
10 or exemption pursuant to Section 25143.2 shall, on or before July 1, 1992, and every two years
11 thereafter, provide to the local officer or agency authorized to enforce this section pursuant to
12 subdivision (a) of Section 25180, all of the following information, using the format established
13 pursuant to subdivision (d), in writing: (1) The name, site address, mailing address, and
14 telephone number of the owner or operator of any facility that recycles the material. (2) The
15 name and address of the generator of the recyclable material. (3) Documentation that the
16 requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including,
17 but not limited to, all of the following: (A) Where a person who recycles the material is not the
18 same person who generated the recyclable material, documentation that there is a known market
19 for disposition of the recyclable material and any products manufactured from the recyclable
20 material. (B) Where the basis for the exclusion is that the recyclable material is used or reused to
21 make a product or as a safe and effective substitute for a commercial product, a general
22 description of the material and products, identification of the constituents or group of
23 constituents, and their approximate concentrations, that would render the material or product
24 hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a
25 waste, and the means by which the material is beneficially used."

26 65. In relevant part, California Code of Regulations, title 22, section 66262.34(f)
27 provides that generators who accumulate hazardous waste on site without a permit or grant of
28 interim status shall comply with the Department's labeling requirements as set forth in said

1 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous
2 waste on site without a permit or grant of interim status shall comply with the following
3 requirements: (1) the date upon which each period of accumulation begins shall be clearly
4 marked and visible for inspection on each container and portable tank; (2) the date the applicable
5 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of
6 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each
7 container and tank; and (3) each container and tank used for onsite accumulation of hazardous
8 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all
9 containers and portable tanks shall be labeled with the following information: (A) composition
10 and physical state of the wastes; (B) statement or statements which call attention to the particular
11 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the
12 person producing the waste.

13 66. Beginning on an undetermined date prior to October 16, 2003, and continuing
14 through at least October 17, 2003, defendants, with regard to the following hazardous wastes,
15 failed to comply with the documentation requirements applicable to conditionally exempt
16 recyclable hazardous wastes in violation of Health and Safety Code sections 25143.2(f) and
17 25143.10(a), and California Code of Regulations, title 22, section 66262.34(f): Approximately
18 fifty (50), 55-gallon containers and tanks with spent aqueous waste containing cyanide that were
19 located in the Facility's manual plating room, gold recovery room (North Reclaim room), the
20 generator area, and the Chem pad area, and that were improperly labeled as "Excluded
21 Recyclable Material."

22 67. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
23 civil penalties according to proof based on this intentional or negligent violation. In the
24 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
25 and Safety Code section 25189.2.

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1 temperature variations, tank end deflection, vapor pockets, and high water table effects,
2 (B) for other than non-enterable underground tanks and for ancillary equipment, this assessment
3 shall be either a leak test, as described above, or an internal inspection and/or other tank integrity
4 examination certified by an independent, qualified, professional engineer, registered in
5 California, in accordance with section 66270.11(d) that addresses cracks, leaks, corrosion, and
6 erosion."

7 72. Beginning on an undetermined date prior to October 16, 2003, and continuing
8 through at least June 2005, defendants failed to obtain a written assessment for the following
9 hazardous waste treatment tanks certified by an independent, qualified engineer registered in
10 California in violation of California Code of Regulations, title 22, section 66265.191:

11 (a) Three (3) cyanide waste accumulation tanks, SP-10, SP-12, and SP-14 (85-gallons
12 each), marked as cyanide wastes in the plating area.

13 (b) One (1) opaque white, poly, cyanide waste accumulation tank, #SP-16
14 (85-gallons), marked as "CYANIDE WASTE", located in the Acid Cleaning room behind the
15 eyewash/shower;

16 (c) One (1) opaque white, poly, 200-gallon cyanide waste accumulation tank, #SP-23,
17 unmarked, in the Manual Plating room;

18 (d) Two (2) opaque white, poly, cyanide waste accumulation tanks, #SP-25, #SP-27
19 (200 gallons each), each marked as "CYANIDE WASTES", located in the IPA Cleaning room;

20 (e) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to
21 tank #SP-27 containing cyanide wastes located in the IPA Cleaning room;

22 (f) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, #A
23 and #B marked as "CYANIDES To N. RECLAIM Rack Strip Tank" and "CYANIDE RINSES
24 To WWTP";

25 (g) One (1) white poly, rectangular tank, #E, marked as "CYANIDE WASTE
26 WATER";

27 (h) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank,
28 #D, marked as "GENERAL RINSE."

1 73. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
2 civil penalties according to proof based on this intentional or negligent violation. In the
3 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
4 and Safety Code section 25189.2.

5 **TENTH CAUSE OF ACTION**

6 (Failure to Obtain Assessment by Certified Engineer for
7 New Hazardous Waste Treatment Tank)

8 74. Paragraphs 1 through 27 above are incorporated by reference as though fully set
9 forth herein.

10 75. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
11 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated
12 ancillary equipment and containment system."

13 76. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
14 "component" as "any constituent part of a unit or any group of constituent parts of a unit which
15 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,
16 a pump seal, pump, kiln liner, kiln thermocouple)."

17 77. In relevant part, California Code of Regulations, title 22, section 66265.192
18 provides that owners or operators of new tank systems or components shall ensure that the
19 foundation, structural support, seams, connections, and pressure controls (if applicable) are
20 adequately designed and that the tank system has sufficient structural strength, compatibility with
21 the waste(s) to be transferred, stored or treated, and corrosion protection so that it will not
22 collapse, rupture, or fail. The owner or operator shall obtain a written assessment reviewed and
23 certified by an independent, qualified, professional engineer, registered in California attesting
24 that the system has sufficient structural integrity, is acceptable for the transferring, storing and
25 treating of hazardous waste, and that the tanks and containment system are suitably designed to
26 achieve the requirements of this article. This assessment shall be obtained prior to placing the
27 tank system in service, and shall be kept on file at the facility.

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1 78. Beginning on an undetermined date prior to June 21, 2005 and continuing through
2 at least June 21, 2005, defendants failed to obtain a written assessment for the following
3 hazardous waste treatment tanks certified by an independent, qualified engineer registered in
4 California in violation of California Code of Regulations, title 22, section 66265.192: One (1),
5 2,500-gallon, opaque white poly, cyanide waste accumulation/batch treatment tank marked as
6 "Sii," located in a separate part of the wastewater treatment area. The tank was installed in
7 March 2004.

8 79. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
9 civil penalties according to proof based on this intentional or negligent violation. In the
10 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
11 and Safety Code section 25189.2.

12 **ELEVENTH CAUSE OF ACTION**

13 (Failure to Provide Secondary Containment for

14 Hazardous Waste Treatment Tanks Assessed and Certified by Engineer)

15 80. Paragraphs 1 through 27 above are incorporated by reference as though fully set
16 forth herein.

17 81. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
18 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated
19 ancillary equipment and containment system."

20 82. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
21 "component" as "any constituent part of a unit or any group of constituent parts of a unit which
22 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,
23 a pump seal, pump, kiln liner, kiln thermocouple)."

24 83. In relevant part, California Code of Regulations, title 22, section 66265.193(a)
25 provides that in order to prevent the release of hazardous waste or hazardous constituents to the
26 environment, secondary containment that meets the requirements of this section shall be provided
27 for all tank systems or components prior to the tank system or component being put into service.
28 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,

1 installed, and operated to prevent any migration of wastes or accumulated liquid out of the
2 system to the soil, ground water, or surface water at any time during the use of the tank system;
3 and (2) capable of detecting and collecting releases and accumulated liquids until the collected
4 material is removed.

5 84. In relevant part, California Code of Regulations, title 22, section 66265.193(e)(1)
6 provides that "external liner systems shall be: (A) designed or operated to contain 100 percent of
7 the capacity of the largest tank within its boundary; (B) designed or operated to prevent run-on
8 and infiltration of precipitation into the secondary containment system unless the collection
9 system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this
10 section, to contain run-on and infiltration. Such additional capacity shall be sufficient to contain
11 run-on and infiltration of precipitation from a 25-year, 24-hour rainfall event; (C) free of cracks
12 or gaps; and (D) designed and installed to completely surround the tank and to cover all
13 surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e.,
14 capable of preventing lateral as well as vertical migration of the waste)."

15 85. In relevant part, California Code of Regulations, title 22, section 66265.193(i)
16 provides that *tank systems* shall have an annual leak test or an internal inspection or other tank
17 integrity examination by an independent, qualified, professional engineer, registered in
18 California, that addresses cracks, leaks, corrosion, and erosion. Section 66265.193(i) also
19 provides that the owner or operator shall maintain on file at the facility a record of the results of
20 the assessments conducted in accordance with this regulation.

21 86. In relevant part, California Code of Regulations, title 22, section 66265.193(j)
22 further provides that secondary containment that meets the requirements of subsections (j)(2) and
23 (l) shall be provided for tank systems used to manage hazardous wastes generated onsite.

24 87. Beginning on an undetermined date prior to October 16, 2003, and continuing
25 through at least June 2005, defendants failed to provide secondary containment assessed and
26 certified by an independent, qualified engineer for the following hazardous waste treatment tanks
27 in violation of California Code of Regulations, title 22, section 66265.193:

28 ///

1 (a) Three cyanide (3) accumulation tanks, SP-10, SP-12, and SP-14 (85-gallons
2 each), marked as cyanide wastes in the plating area.

3 (b) One (1), 85-gallon, opaque white, poly, cyanide waste accumulation tank #SP-16,
4 marked as "CYANIDE WASTE," located in the Acid Cleaning room behind the
5 eyewash/shower.

6 (c) One (1) opaque white, poly, 200-gallons cyanide waste accumulation tank,
7 #SP-23, unmarked, in the Manual Plating room.

8 (d) Two (2) opaque white, poly, cyanide waste accumulation tanks, #SP-25, #SP-27
9 (200 gallons each), marked as "cyanide wastes", located in the IPA Cleaning room.

10 (e) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to
11 tank #SP-27 containing cyanide wastes.

12 88. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
13 civil penalties according to proof based on this intentional or negligent violation. In the
14 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
15 and Safety Code section 25189.2.

16 **TWELFTH CAUSE OF ACTION**

17 (Failure to Provide Adequate Secondary Containment for
18 Hazardous Waste Treatment Tanks Certified by Engineer)

19 89. Paragraphs 1 through 27 above are incorporated by reference as though fully set
20 forth herein.

21 90. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
22 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated
23 ancillary equipment and containment system."

24 91. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
25 "component" as "any constituent part of a unit or any group of constituent parts of a unit which
26 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,
27 a pump seal, pump, kiln liner, kiln thermocouple)."

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1 92. In relevant part, California Code of Regulations, title 22, section 66265.193(a)
2 provides that in order to prevent the release of hazardous waste or hazardous constituents to the
3 environment, secondary containment that meets the requirements of this section shall be provided
4 for all tank systems or components prior to the tank system or component being put into service.
5 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,
6 installed, and operated to prevent any migration of wastes or accumulated liquid out of the
7 system to the soil, ground water, or surface water at any time during the use of the tank system;
8 and (2) capable of detecting and collecting releases and accumulated liquids until the collected
9 material is removed.

10 93. In relevant part, California Code of Regulations, title 22, section 66265.193(e)(1)
11 provides that "external liner systems shall be: (A) designed or operated to contain 100 percent of
12 the capacity of the largest tank within its boundary; (B) designed or operated to prevent run-on
13 and infiltration of precipitation into the secondary containment system unless the collection
14 system has sufficient excess capacity, in addition to that required in subsection (e)(1)(A) of this
15 section, to contain run-on and infiltration. Such additional capacity shall be sufficient to contain
16 run-on and infiltration of precipitation from a 25-year, 24-hour rainfall event; (C) free of cracks
17 or gaps; and (D) designed and installed to completely surround the tank and to cover all
18 surrounding earth likely to come into contact with the waste if released from the tank(s) (i.e.,
19 capable of preventing lateral as well as vertical migration of the waste)."

20 94. In relevant part, California Code of Regulations, title 22, section 66265.193(i)
21 provides that *tank systems* shall have an annual leak test or an internal inspection or other tank
22 integrity examination by an independent, qualified, professional engineer, registered in
23 California, that addresses cracks, leaks, corrosion, and erosion. Section 66265.193(i) also
24 provides that the owner or operator shall maintain on file at the facility a record of the results of
25 the assessments conducted in accordance with this regulation.

26 95. In relevant part, California Code of Regulations, title 22, section 66265.193(j)
27 further provides that secondary containment that meets the requirements of subsections (j)(2) and
28 (l) shall be provided for tank systems used to manage hazardous wastes generated onsite.

1 under uncontrolled conditions because the commingling might produce heat or pressure, fire or
2 explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases.”

3 100. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
4 “tank system” as “a hazardous waste transfer, storage or treatment tank and its associated
5 ancillary equipment and containment system.”

6 101. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
7 “component” as “any constituent part of a unit or any group of constituent parts of a unit which
8 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,
9 a pump seal, pump, kiln liner, kiln thermocouple).”

10 102. In relevant part, California Code of Regulations, title 22, section 66265.193(a)
11 provides that in order to prevent the release of hazardous waste or hazardous constituents to the
12 environment, secondary containment that meets the requirements of this section shall be provided
13 for all tank systems or components prior to the tank system or component being put into service.
14 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,
15 installed, and operated to prevent any migration of wastes or accumulated liquid out of the
16 system to the soil, ground water, or surface water at any time during the use of the tank system;
17 and (2) capable of detecting and collecting releases and accumulated liquids until the collected
18 material is removed. In relevant part, section 66265.193(j) further provides that secondary
19 containment that meets the requirements of subsections (j)(2) and (l) shall be provided for tank
20 systems used to manage hazardous wastes generated onsite. Section 66265.193(l) provides that
21 secondary containment for onground or aboveground generator and onsite tier (Permit-by-Rule
22 Conditional Authorization, and Conditional Exemption), non-RCRA tank systems or tank
23 systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist
24 of any of the devices listed in section 66265.193(d) and satisfy the requirements of section
25 66265.193(e) or consist of any device or combination of devices as approved in writing by the
26 CUPA, or the Department if there is no CUPA or the CUPA requests that the Department makes
27 a determination.

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1 103. In relevant part, California Code of Regulations, title 22, section 66265.194(d)
2 provides that "[t]ransfer, treatment or storage of hazardous waste in tanks shall comply with
3 section 66265.17(b)."

4 104. California Code of Regulations, title 22, section 66265.199 provides that "(a)
5 Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank
6 system, unless section 66265.17(b) is complied with. (b) Hazardous waste shall not be placed in
7 a tank system that has not been decontaminated and that previously held an incompatible waste
8 or material, unless section 66265.17(b) is complied with."

9 105. In relevant part, California Code of Regulations, title 22, section 66265.17(b)
10 provides that "the transfer, treatment, storage, or disposal of ignitable or reactive waste, and the
11 mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be
12 conducted so that it does not: (1) generate extreme heat or pressure, fire or explosion, or violent
13 reaction; (2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to
14 threaten human health or the environment; (3) produce uncontrolled flammable fumes or gases in
15 sufficient quantities to pose a risk of fire or explosions; (4) damage the structural integrity of the
16 device or facility containing the waste; or (5) through other like means threaten human health or
17 the environment."

18 106. Beginning on an undetermined date prior to June 21, 2005, and continuing
19 through at least June 21, 2005, defendants failed to provide separate secondary containment for
20 the following tanks holding incompatible corrosive ($\text{pH} \leq 2$ or ≥ 12.5) waste and cyanide-bearing
21 hazardous wastes in violation of California Code of Regulations, title 22, sections 66265.193,
22 66265.194(d), 66265.199, and 66265.17(b): Four (4) tanks marked "A," "B," "D," and "E,"
23 varying in size between 500 and 1,000 gallons, tanks "A," "B," and "E" contained cyanide
24 wastes, and tank "D" contained corrosive waste. These tanks were located within the same
25 containment area. In addition, a pipe carrying hydrochloric acid, which is incompatible with the
26 cyanides wastes contained in tanks "A," "B," and "E," passed through the same containment area.
27 Defendants maintained only one secondary containment system for its tank system and
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1 component parts holding incompatible wastes which, in the event of tank failure, could
2 potentially mix in the secondary containment and generate toxic hydrogen cyanide gas.

3 107. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for
4 civil penalties according to proof based on this intentional or negligent violation. In the
5 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
6 and Safety Code section 25189.2.

7 **FOURTEENTH CAUSE OF ACTION**

8 (Failure to Conduct Inspections of Hazardous Waste Tanks
9 and Maintain Appropriate Documentation)

10 108. Paragraphs 1 through 27 above are incorporated by reference as though fully set
11 forth herein.

12 109. In relevant part, California Code of Regulations, title 22, section
13 66262.34(a)(1)(A) provides that a generator may accumulate hazardous waste on-site for 90 days
14 or less without a permit or grant of interim status, provided that the waste is placed in tanks and
15 the generator complies with article 10 (Tank Systems) of chapter 15.

16 110. California Code of Regulations, title 22, section 66265.195(a) provides "[t]he
17 owner or operator shall inspect, where present, at least once each operating day: (1) overflow/spill
18 control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to
19 ensure that it is in good working order; (2) the aboveground portions of the tank system, if any, to
20 detect corrosion or releases of waste; (3) data gathered from monitoring equipment and
21 leak-detection equipment, (e.g., pressure and temperature gauges, monitoring wells) to ensure
22 that the tank system is being operated according to its design; (4) the construction materials and
23 the area immediately surrounding the externally accessible portion of the tank system including
24 secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous
25 waste (e.g., wet spots, dead vegetation); and (5) for uncovered tanks, the level of waste in the
26 tank, to ensure compliance with section 66265.194(b)(3)." Section 66265.195(c) further
27 provides that "[t]he owner or operator shall document in the operating record of the facility an
28 inspection of those items in subsections (a) and (b) of this section."

1 111. Beginning on an undetermined date prior to June 21, 2005, and continuing
2 through at least June 21, 2005, defendants failed to conduct daily inspections of the following
3 hazardous waste tanks and maintain records of the inspections at the Facility in violation of
4 California Code of Regulations, title 22, section 66265.195:

5 (a) Three (3) cyanide waste accumulation tanks, "SP-10," "SP-12," and "SP-14,"
6 marked as cyanide wastes in the plating area.

7 (b) One (1), 2,500-gallon, opaque white poly, cyanide waste accumulation/batch
8 treatment tank marked as "Sii," located in the wastewater treatment area. This tank was installed
9 in March 2004.

10 (c) One (1) opaque white, poly, cyanide waste accumulation tank, "SP-16"
11 (85-gallons), marked as CYANIDE WASTE, located in the Acid Cleaning room behind the
12 eyewash/shower.

13 (d) One (1) opaque white, poly, 200-gallons cyanide waste accumulation tank,
14 "SP-23," unmarked, in the Manual Plating room.

15 (e) Two (2) opaque white, poly, cyanide waste accumulation tanks, "SP-25," and
16 "SP-27," marked as "cyanide wastes", located in the IPA Cleaning room.

17 (f) One (1), 30-gallon, opaque, white poly tank marked as "acid" was stored next to
18 tank "SP-27" containing cyanide wastes.

19 (g) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, "A"
20 and "B," marked as "CYANIDE To N. RECLAIM Rack Strip Tank", "CYANIDE RINSE To
21 WWTP," "CYANIDE RINSE."

22 (h) One (1) white, poly, rectangular tank, "E," marked as "CYANIDE WASTE
23 WATER."

24 (i) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank
25 "D," marked as "GENERAL RINSE."

26 112. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
27 civil penalties according to proof based on this intentional or negligent violation. In the

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1 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
2 and Safety Code section 25189.2.

3 **FIFTEENTH CAUSE OF ACTION**

4 (Failure to Have Written Inspection Schedule for
5 All Generator Areas Within the Facility)

6 113. Paragraphs 1 through 27 above are incorporated by reference as though fully set
7 forth herein.

8 114. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
9 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
10 or grant of interim status shall comply with the specified requirements contained in chapter 15.

11 115. In relevant part, California Code of Regulations, title 22, section 66265.15(a)
12 provides that the "owner or operator shall inspect the facility for malfunctions and deterioration,
13 operator errors, and discharges which may be causing or may lead to: (1) release of hazardous
14 waste constituents to the environment; or (2) a threat to human health. The owner or operator
15 shall conduct these inspections often enough to identify problems in time to correct them before
16 they harm human health or the environment." Section 66265.15(b) further provides that "(1) the
17 owner or operator shall develop and follow a written schedule for inspecting all monitoring
18 equipment, safety and emergency equipment, security devices, and operating and structural
19 equipment (such as dikes and sump pumps) that are important to preventing, detecting, or
20 responding to environmental or human health hazards. (2) The owner or operator shall keep this
21 schedule at the facility. (3) The schedule shall identify the types of problems (e.g., malfunctions
22 or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump,
23 leaking fitting, eroding dike, etc.)." Section 66265.15(d) provides that the "owner or operator
24 shall record inspections in an inspection log or summary. The owner or operator shall keep these
25 records for at least three years from the date of inspection. At a minimum, these records shall
26 include the date and time of the inspection, the name of the inspector, a notation of the
27 observations made, and the date and nature of any repairs or other remedial actions."

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1 116. Beginning on an undetermined date prior to October 16, 2003, and continuing
2 through at least June 2005, defendants failed to maintain a written inspection schedule for the
3 following hazardous waste management areas at the Facility in violation of California Code of
4 Regulations, title 22, sections 66262.34 and 66265.15: Manual Plating room and the gold
5 recovery room/stripping room, also known as the "North Reclaim room."

6 117. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
7 civil penalties according to proof based on this intentional or negligent violation. In the
8 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
9 and Safety Code section 25189.2.

10 **SIXTEENTH CAUSE OF ACTION**

11 (Failure to Provide Separate Secondary Containment for Incompatible Hazardous Wastes)

12 118. Paragraphs 1 through 27 above are incorporated by reference as though fully set
13 forth herein.

14 119. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
15 "incompatible waste" as "a hazardous waste which is unsuitable for: (a) placement in a
16 particular device or facility because it may cause corrosion or decay of containment materials
17 (e.g., container inner liners or tank walls); or (b) commingling with another waste or material
18 under uncontrolled conditions because the commingling might produce heat or pressure, fire or
19 explosion, violent reaction, toxic dusts, mists, fumes, or gases or flammable fumes or gases."

20 120. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
21 "tank system" as "a hazardous waste transfer, storage or treatment tank and its associated
22 ancillary equipment and containment system."

23 121. In relevant part, California Code of Regulations, title 22, section 66260.10 defines
24 "component" as "any constituent part of a unit or any group of constituent parts of a unit which
25 are assembled to perform a specific function (e.g., a tank or ancillary equipment of a tank system,
26 a pump seal, pump, kiln liner, kiln thermocouple)."

27 122. In relevant part, California Code of Regulations, title 22, section 66265.193(a)
28 provides that in order to prevent the release of hazardous waste or hazardous constituents to the

1 environment, secondary containment that meets the requirements of this section shall be provided
2 for all tank systems or components prior to the tank system or component being put into service.
3 Section 66265.193(b) provides that secondary containment systems shall be: (1) designed,
4 installed, and operated to prevent any migration of wastes or accumulated liquid out of the
5 system to the soil, ground water, or surface water at any time during the use of the tank system;
6 and (2) capable of detecting and collecting releases and accumulated liquids until the collected
7 material is removed. In relevant part, section 66265.193(j) further provides that secondary
8 containment that meets the requirements of subsections (j)(2) and (l) shall be provided for tank
9 systems used to manage hazardous wastes generated onsite. Section 66265.193(l) provides that
10 secondary containment for onground or aboveground generator and onsite tier (Permit-by-Rule
11 Conditional Authorization, and Conditional Exemption), non-RCRA tank systems or tank
12 systems otherwise exempt from permitting requirements pursuant to the federal act, shall consist
13 of any of the devices listed in section 66265.193(d) and satisfy the requirements of section
14 66265.193(e) or consist of any device or combination of devices as approved in writing by the
15 CUPA, or the Department if there is no CUPA or the CUPA requests that the Department makes
16 a determination.

17 123. In relevant part, California Code of Regulations, title 22, section 66265.194(d)
18 provides that "[t]ransfer, treatment or storage of hazardous waste in tanks shall comply with
19 section 66265.17(b)."

20 124. California Code of Regulations, title 22, section 66265.199 provides that "(a)
21 Incompatible wastes, or incompatible waste and materials, shall not be placed in the same tank
22 system, unless section 66265.17(b) is complied with. (b) Hazardous waste shall not be placed in
23 a tank system that has not been decontaminated and that previously held an incompatible waste
24 or material, unless section 66265.17(b) is complied with."

25 125. In relevant part, California Code of Regulations, title 22, section 66265.17(b)
26 provides that "the transfer, treatment, storage, or disposal of ignitable or reactive waste, and the
27 mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be
28 conducted so that it does not: (1) generate extreme heat or pressure, fire or explosion, or violent

1 reaction; (2) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to
2 threaten human health or the environment; (3) produce uncontrolled flammable fumes or gases in
3 sufficient quantities to pose a risk of fire or explosions; (4) damage the structural integrity of the
4 device or facility containing the waste; or (5) through other like means threaten human health or
5 the environment."

6 126. Beginning on an undetermined date prior to June 21, 2005, and continuing
7 through at least June 21, 2005, defendants failed to provide separate secondary containment for
8 the following tanks holding incompatible corrosive ($\text{pH} \leq 2$ or ≥ 12.5) waste and cyanide-bearing
9 hazardous wastes in violation of California Code of Regulations, title 22, sections 66265.193,
10 66265.194(d), 66265.198, 66265.199, and 66265.17(b):

11 (a) Two (2) open 3,000-gallon tanks, "MOD-14" and "MOD- 15", containing cyanide
12 wastes, were located next to one (1) open 650-gallon tank, MOD-12, containing corrosive waste
13 with nickel, and one (1) open tank, "MOD-5", containing cyanide waste.

14 (b) One (1), 30-gallon, opaque, white poly tank marked "acid" was stored next to tank
15 "SP-27" containing cyanide wastes.

16 (c) Two (2) opaque white, poly, cylindrical, cyanide waste accumulation tanks, "A"
17 and "B," marked as "CYANIDE To N. RECLAIM Rack Strip Tank", "CYANIDE RINSE To
18 WWTP," "CYANIDE RINSE."

19 (d) One (1) white, poly, rectangular tank, "E," marked as "CYANIDE WASTE
20 WATER."

21 (e) One (1) opaque white, poly, cylindrical, general rinse waste accumulation tank
22 "D," marked as "GENERAL RINSE."

23 (f) A pipe carrying hydrochloric acid also passed though the same containment area.

24 127. Defendants maintained only one secondary containment system for these tank
25 systems and component parts holding incompatible and/or reactive wastes which, in the event of
26 tank failure, could potentially mix in the secondary containment and generate toxic hydrogen
27 cyanide gas.

28 128. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for

1 civil penalties according to proof based on this intentional or negligent violation. In the
2 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
3 and Safety Code section 25189.2.

4 **SEVENTEENTH CAUSE OF ACTION**

5 (Failure to Maintain At Least 2 Feet of Freeboard for Hazardous Waste Tanks)

6 129. Paragraphs 1 through 27 above are incorporated by reference as though fully set
7 forth herein.

8 130. In relevant part, California Code of Regulations, title 22, section
9 66262.34(a)(1)(A) provides that generators who accumulate hazardous waste in tanks stored on
10 site without a permit or grant of interim status shall comply with article 10 of chapter 15,
11 including California Code of Regulations, title 22, section 66265.194.

12 131. In relevant part, California Code of Regulations, title 22, section 66265.194(b)(3)
13 provides that an owner or operator shall use appropriate controls and practices to prevent spills
14 and overflows from tanks or secondary containment systems. At a minimum, an owner or
15 operator is required to maintain sufficient freeboard (at least two feet) in uncovered tanks to
16 prevent overtopping by wave or wind action or by precipitation, unless the tank is equipped with
17 a containment structure (e.g., dike or trench), a drainage control system or a diversion structure
18 (e.g., standby tank) with a capacity that equals or exceeds the volume of the top 60 centimeters (2
19 feet) of the tank.

20 132. Beginning on an undetermined date prior to prior to October 16, 2003, and
21 continuing through at least June 21, 2005, defendants failed to maintain sufficient freeboard (at
22 least two feet) in approximately eleven (11) hazardous waste tanks that were uncovered and
23 located in an outside area of the Facility in violation of California Code of Regulations, title 22,
24 section 66265.194(b)(3).

25 133. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for
26 civil penalties according to proof based on this intentional or negligent violation. In the
27 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
28 and Safety Code section 25189.2.

1 **EIGHTEENTH CAUSE OF ACTION**

2 (Failure to Appropriately Manage Empty Hazardous Waste Containers)

3 134. Paragraphs 1 through 27 above are incorporated by reference as though fully set
4 forth herein.

5 135. In relevant part, California Code of Regulations, title 22, section 66261.7(f)
6 provides that a container larger than five gallons in capacity which previously held hazardous
7 materials, including hazardous waste, shall be marked with the date it has been emptied and shall
8 be managed in accordance with section 66261.7(e) within one year of being emptied.

9 136. Beginning on or about July 25, 2003, and continuing through at least March 4,
10 2004, defendants failed to appropriately manage one (1) 55-gallon empty container that
11 previously contained hazardous material (ethylene glycol). The container was marked with a
12 date emptied "7/25/02," and was stored in the Facility's Chem pad area for a period greater than
13 one year.

14 137. Pursuant to Health and Safety Code section 25189(b), Defendants are liable for
15 civil penalties according to proof based on this intentional or negligent violation. In the
16 alternative, Defendants are strictly liable for civil penalties according to proof pursuant to Health
17 and Safety Code section 25189.2.

18 **NINETEENTH CAUSE OF ACTION**

19 (Failure to Maintain and Operate Facility to Minimize Hazardous Waste Releases)

20 138. Paragraphs 1 through 27 above are incorporated by reference as though fully set
21 forth herein.

22 139. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
23 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
24 or grant of interim status shall comply with the requirements for owners or operators in articles 3
25 and 4 of chapter 15, including California Code of Regulations, title 22, section 66265.35.

26 140. California Code of Regulations, title 22, section 66265.35 provides that the
27 "owner or operator shall maintain aisle space to allow the unobstructed movement of personnel,
28 fire protection equipment, spill control equipment, and decontamination equipment to any area of

1 facility operation in an emergency, unless it can be demonstrated to the Department that aisle
2 space is not needed for any of these purposes.”

3 141. Beginning on an undetermined date prior to October 16, 2003, and continuing
4 through at least October 24, 2003, defendants failed to maintain appropriate aisle space to allow
5 unobstructed movement of personnel, fire protection equipment, spill control equipment, and
6 decontamination equipment for the hazardous waste containers that were located in the Facility’s
7 Chem Pad waste storage areas, in violation of sections 66262.34 and 66265.35.

8 142. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
9 civil penalties according to proof based on this intentional or negligent violation. In the
10 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
11 and Safety Code section 25189.2.

12 **TWENTIETH CAUSE OF ACTION**

13 (Failure to Comply with Hazardous Waste Exemption Requirements)

14 143. Paragraphs 1 through 27 above are incorporated by reference as though fully set
15 forth herein.

16 144. In relevant part, California Code of Regulations, title 22, section 66261.2(g)
17 provides that defendants involved in actions to enforce HWCL regulations who claim that a
18 certain material is not a waste or is conditionally exempt from regulation, must demonstrate that
19 there is a known market or disposition for the material, and that they meet the terms of the
20 exclusion or exemption. Section 66261.2(g) further provides that defendants must provide
21 appropriate documentation (such as contracts showing that a second person uses the material as
22 an ingredient in a production process) to demonstrate that the material is not a waste, or is
23 exempt from regulation.

24 145. In relevant part, Health and Safety Code section 25143.2(f) provides that
25 “[a]ny person who manages a recyclable material under a claim that the material qualifies for
26 exclusion or exemption pursuant to this section shall provide, upon request, to the department,
27 the California Environmental Protection Agency, or any local agency or official authorized to
28 bring an action as provided in Section 25180, all of the following information: (A) The name,

1 street and mailing address, and telephone number of the owner or operator of any facility that
2 manages the material. (B) Any other information related to the management by that person of the
3 material requested by the department, the California Environmental Protection Agency, or the
4 authorized local agency or official. (2) Any person claiming an exclusion or an exemption
5 pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the
6 requesting agency or official that there is a known market or disposition for the material, and that
7 the requirements of any exemption or exclusion pursuant to this section are met.”

8 146. Beginning on an undetermined date prior to October 16, 2003, and continuing
9 through at least June 28, 2005, defendants violated California Code of Regulations, title 22,
10 section 66261.2(g) and Health and Safety Code section 25143.2(f) by failing to:

11 (a) Demonstrate that one (1) 275-gallon tank of methanol and two (2) 275-gallon
12 tanks of Isopropyl Alcohol (IPA) were used as an ingredient in the manufacture of windshield
13 wiper fluid and window cleaner and therefore exempt as hazardous waste pursuant to Health and
14 Safety Code section 25143.2(b);

15 (b) Demonstrate that there was a known market or disposition for the above-
16 referenced methanol and IPA; and

17 (c) Provide documentation (such as contracts showing that a second person
18 uses the material as an ingredient in a production process) to demonstrate that the methanol and
19 IPA materials are not wastes, or are exempt from regulation.

20 147. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
21 civil penalties according to proof based on this intentional or negligent violation. In the
22 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
23 and Safety Code section 25189.2.

24 **TWENTY-FIRST CAUSE OF ACTION**

25 (Falsification of Documents)

26 148. Paragraphs 1 through 27 above are incorporated by reference as though fully set
27 forth herein.

28 149. In relevant part, Health and Safety Code section 25189.2(a) provides that “[a]ny

1 person who makes any false statement or representation in any application, label, manifest,
2 record, report, permit, or other document, filed, maintained, or used for purposes of compliance
3 with this chapter (HWCL), is liable for a civil penalty not to exceed twenty-five thousand dollars
4 (\$25,000) for each separate violation or, for continuing violations, for each day that the violation
5 continues.

6 150. During the October 2003 and June 21, 2005 Facility inspections by the
7 Department, defendants falsified the following documents in violation of Health and Safety Code
8 section 25189.2(a):

9 (a) Monthly inspection logs (for the month of May 2005) were falsified to show
10 compliance with monthly inspection requirements for the Facility's emergency equipment.
11 Specifically, defendants falsified documents to show that they had inspected eyewash/showers
12 and fire extinguishers in May 2005 when in fact that emergency equipment was not inspected in
13 May 2005.

14 (b) During the October 2003 and June 2005 Facility inspections, Facility process
15 flowcharts were presented to the Department's representative which purportedly reflected current
16 and accurate manufacturing process activities at the Facility. In fact, the process flowcharts
17 failed to include and identify waste accumulation areas (IPA cleaning room) and hazardous waste
18 tanks, including tanks containing cyanide wastes.

19 151. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
20 civil penalties according to proof based on this intentional or negligent violation. In the
21 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
22 and Safety Code section 25189.2.

23 **TWENTY-SECOND CAUSE OF ACTION**

24 (Failure to Properly Label Hazardous Waste Containers as "Hazardous Waste")

25 152. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
26 forth herein.

27 153. In relevant part, California Code of Regulations, title 22, section 66262.34(a)
28 provides that a generator may accumulate hazardous waste on-site for 90 days or less without a

1 permit or grant of interim status, provided that: . . . (2) the date upon which each period of
2 accumulation begins is clearly marked and visible for inspection on each container; and
3 (3) the generator complies with the requirements of subsection (f) of this section; and
4 (4) the generator complies with the requirements for owners or operators in articles 3 and 4 of
5 chapter 15 of this division and with section 66265.16, and with section 66268.7(a)(5).

6 154. In relevant part, California Code of Regulations, title 22, section 66262.34(f)
7 provides that generators who accumulate hazardous waste on site without a permit or grant of
8 interim status shall comply with the Department's labeling requirements as set forth in said
9 regulation. Section 66262.34(f) further provides that generators who accumulate hazardous
10 waste on site without a permit or grant of interim status shall comply with the following
11 requirements: (1) the date upon which each period of accumulation begins shall be clearly
12 marked and visible for inspection on each container and portable tank; (2) the date the applicable
13 accumulation period specified in subsection (a) or (d) of this section begins, for purposes of
14 subsections (a) and (b) of this section, shall be clearly marked and visible for inspection on each
15 container and tank; and (3) each container and tank used for onsite accumulation of hazardous
16 waste shall be labeled or marked clearly with the words, "Hazardous Waste." Additionally, all
17 containers and portable tanks shall be labeled with the following information: (A) composition
18 and physical state of the wastes; (B) statement or statements which call attention to the particular
19 hazardous properties of the waste (e.g., flammable, reactive, etc.); (C) name and address of the
20 person producing the waste.

21 155. Beginning on an undetermined date prior to June 21, 2005, and continuing
22 through at least June 21, 2005, defendants failed to properly label the following hazardous waste
23 containers and tanks with the words "hazardous waste" and failed to identify on the labels the
24 hazardous properties and composition of the wastes, and failed to identify the initial date of
25 accumulation, in violation of California Code of Regulations, title 22, section 66262.34(a) and
26 (f):

27 (a) Cyanide batch treatment tank Sii, and tanks TA-4, TA-9, TA-11, TA-12, MOD-2,
28 MOD-3, MOD-4, MOD-5, MOD-9, MOD-12, MOD-13, MOD-14, MOD-15.

1 156. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
2 civil penalties according to proof based on this intentional or negligent violation. In the
3 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
4 and Safety Code section 25189.2.

5 **TWENTY-THIRD CAUSE OF ACTION**

6 (Failure to Properly Inspect and Maintain Emergency Equipment")

7 157. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
8 forth herein.

9 158. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
10 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
11 or grant of interim status shall comply with the requirements for owners or operators in articles 3
12 and 4 of chapter 15.

13 159. In relevant part, California Code of Regulations, title 22, section 66265.15(b)
14 provides that the owner or operator of a facility shall develop and follow a written schedule for
15 inspecting all safety and emergency equipment that are important to preventing, detecting, or
16 responding to environmental or human health hazards.

17 160. California Code of Regulations, title 22, section 66265.33 provides that "[a]ll
18 facility communications or alarm systems, fire protection equipment, spill control equipment,
19 and decontamination equipment, where required, shall be tested and maintained as necessary to
20 assure its proper operation in time of emergency."

21 161. California Code of Regulations, title 22, section 66265.35 provides that "[t]he
22 owner or operator shall maintain aisle space to allow the unobstructed movement of personnel,
23 fire protection equipment, spill control equipment, and decontamination equipment to any area of
24 facility operation in an emergency, unless it can be demonstrated to the Department that aisle
25 space is not needed for any of these purposes."

26 162. Beginning on an undetermined date prior to June 21, 2005, and continuing
27 through at least June 21, 2005, defendants failed to inspect fourteen (14) eyewash/showers
28 (100%) and approximately sixty (60) fire extinguishers (50%) on a monthly basis, in violation of

1 California Code of Regulations, title 22, sections 66262.34(a)(4), 66265.15(b) and 66265.33. In
2 addition, defendants failed to provide access to the eyewash/shower located in the Facility's
3 North Reclaim room, in violation of California Code of Regulations, title 22, sections
4 66262.34(a)(4) and 66265.35.

5 163. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
6 civil penalties according to proof based on this intentional or negligent violation. In the
7 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
8 and Safety Code section 25189.2.

9 **TWENTY-FOURTH CAUSE OF ACTION**

10 (Failure to Comply with Tank Closure Requirements)

11 164. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
12 forth herein.

13 165. In relevant part, California Code of Regulations, title 22, section 67383.3 provides
14 that any tank that is identified as a hazardous waste and that is destined to be disposed, reclaimed
15 or closed in place, shall be managed in accordance with all of the requirements of section
16 67383.3, including, but not limited to, obtaining a tank closure certificate by an appropriate
17 certified or registered professional.

18 166. In or about March 2004, and continuing through at least October 20, 2005,
19 defendants replaced a hazardous waste cyanide batch treatment tank and failed to comply with
20 tank closure requirements, including failing to obtain a certificate of closure signed by a certified
21 or licensed professional, in violation of California Code of Regulations, title 22, section 67383.3.
22 Defendants replaced the cyanide batch treatment tank with a new 2500-gallon tank in March
23 2004.

24 167. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
25 civil penalties according to proof based on this intentional or negligent violation. In the
26 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
27 and Safety Code section 25189.2.

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1 **TWENTY-FIFTH CAUSE OF ACTION**

2 (Failure to Properly Close Hazardous Waste Containers)

3 168. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
4 forth herein.

5 169. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
6 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
7 or grant of interim status shall comply with the requirements for owners or operators in article 9
8 of chapter 15.

9 170. California Code of Regulations, title 22, section 66265.173 provides that "(a) a
10 container holding hazardous waste shall always be closed during transfer and storage, except
11 when it is necessary to add or remove waste. (b) A container holding hazardous waste shall not
12 be opened, handled, transferred or stored in a manner which may rupture the container or cause it
13 to leak. Reuse of containers for transportation shall comply with the requirements of the U.S.
14 Department of Transportation regulations including those set forth in 49 CFR section 173.28."

15 171. Beginning on an undetermined date prior to June 21, 2005, and continuing
16 through at least June 21, 2005, defendants failed to properly keep closed the following containers
17 containing hazardous waste in violation of California Code of Regulations, title 22, sections
18 66262.34(a) and 66265.173:

19 (a) Two (2), open and unlabeled, 5-gallon containers that contained a dark brown
20 hazardous waste (cyanide liquid and sludge).

21 172. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
22 civil penalties according to proof based on this intentional or negligent violation. In the
23 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
24 and Safety Code section 25189.2.

25 **TWENTY-SIXTH CAUSE OF ACTION**

26 (Failure to Maintain Appropriate Employee Training Documentation)

27 173. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
28 forth herein.

1 174. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
2 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
3 or grant of interim status shall comply with the requirements section 66265.16 of chapter 15.

4 175. In relevant part, California Code of Regulations, title 22, section 66265.16(a)
5 provides that "(1) facility personnel shall successfully complete a program of classroom
6 instruction or on-the-job training that teaches them to perform their duties in a way that ensures
7 the facility's compliance with the requirements of this chapter. The owner or operator shall
8 ensure that this program includes all the elements described in the document required under
9 subsection (d)(3) of this section. (2) This program shall be directed by a person trained in
10 hazardous waste management procedures, and shall include instruction which teaches facility
11 personnel hazardous waste management procedures (including contingency plan implementation)
12 relevant to the positions in which they are employed. (3) At a minimum, the training program
13 shall be designed to ensure that facility personnel are able to respond effectively to emergencies
14 by familiarizing them with emergency procedures, emergency equipment, and emergency
15 systems. . . ." Section 66265.16, subdivisions (b) through (e), further provide that facility
16 personnel shall complete such required training within specified time limits and that the owner or
17 operator shall maintain appropriate written documentation of such training as set forth in said
18 regulation.

19 176. Beginning on an undetermined date prior to June 21, 2005, and continuing
20 through at least August 1, 2005, defendants failed to failed to have adequate written training
21 documents specific to the job for employees handling hazardous waste at the Facility, in violation
22 of California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.16.

23 177. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
24 civil penalties according to proof based on this intentional or negligent violation. In the
25 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
26 and Safety Code section 25189.2.

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1 **TWENTY-SEVENTH CAUSE OF ACTION**

2 (Failure to Maintain and Operate Facility to Minimize Hazardous Waste Releases)

3 178. Paragraphs 1 through 27 are incorporated by reference herein as though fully set
4 forth herein.

5 179. In relevant part, California Code of Regulations, title 22, section 66262.34(a)(4)
6 provides that generators who accumulate hazardous waste in tanks stored on site without a permit
7 or grant of interim status shall comply with the requirements for owners or operators in article 3
8 of chapter 15.

9 180. California Code of Regulations, title 22, section 66265.31 provides that
10 "[f]acilities shall be maintained and operated to minimize the possibility of a fire, explosion, or
11 any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents
12 to air, soil, or surface water which could threaten human health or the environment."

13 181. Beginning on an undetermined date prior to June 21, 2005, and continuing
14 through at least June 21, 2005, defendants failed to properly maintain and operate the Facility in
15 order to minimize hazardous waste and/or hazardous waste constituent releases into the
16 environment, in violation of California Code of Regulations, title 22, sections 66262.34(a)(4) and
17 66265.31. At the time of the Facility inspections, the Department's representatives observed the
18 following:

19 (a) A release of white liquid from the fenced in cyanide batch treatment area. The
20 white liquid was later identified as bleach that had been spilled on the floor.

21 (b) In the IPA Cleaning room, a release of an unknown material was observed on the
22 floor. The spilled material was later identified as residue from the Facility's final rinse process.

23 182. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
24 civil penalties according to proof based on this intentional or negligent violation. In the
25 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
26 and Safety Code section 25189.2.

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1 appropriate contingency plan that properly addressed sudden or unplanned releases of hazardous
2 wastes or constituents in violation of California Code of Regulations, title 22, sections
3 66262.34(a)(4), 66265.51 and 66265.52. A copy of the Contingency Plan was provided to the
4 Department on August 1, 2005, and that plant was missing marked evacuation routes for the
5 Facility.

6 188. Pursuant to Health and Safety Code section 25189(b), defendants are liable for
7 civil penalties according to proof based on this intentional or negligent violation. In the
8 alternative, defendants are strictly liable for civil penalties according to proof pursuant to Health
9 and Safety Code section 25189.2.

10 **WHEREFORE**, Plaintiff prays that the Court grant the following relief:

11 A. Enter a judgment that defendants and DOES 1-10 are required to pay civil
12 penalties to Plaintiff according to proof pursuant to the First through Twenty-Eighth Causes of
13 Action;

14 B. Enter preliminary injunctions, permanent injunctions, or other orders requiring
15 defendants and DOES 1-10 to comply with the applicable permits, the HWCL and/or the
16 regulations adopted thereunder;

17 C. Grant Plaintiff its costs of investigation;

18 D. Grant Plaintiff its costs of suit herein; and

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1 E. Grant such other and further relief as the Court deems just and proper.

2 Dated: September 13, 2007

3 Respectfully submitted,


4 EDMUND G. BROWN JR., Attorney General
TOM GREENE,

5 Chief Assistant Attorney General
THEODORA BERGER,

6 Senior Assistant Attorney General
TIMOTHY R. PATTERSON

7 Supervising Deputy Attorney General
EDWARD H. OCHOA

8 Deputy Attorney General
California Department of Justice

9
10 By 

11 EDWARD H. OCHOA
12 Deputy Attorney General

13 Attorneys for Plaintiff, People of the
14 State of California, ex rel. Maureen F.
Gorsen, Director, California Department
of Toxic Substances Control

EXHIBIT B

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of the State of California

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

15 **PEOPLE OF THE STATE OF**
16 **CALIFORNIA, ex rel. Maureen F. Gorsen,**
17 **Director, California Department of Toxic**
Substances Control,

18 Plaintiff,

19 v.

20 **KYOCERA AMERICAN, INC., and DOES**
21 **1-10,**

22 Defendants.

37-2007-00074954-CU-MC-CTL

**[Proposed] FINAL CONSENT
JUDGMENT AND INJUNCTION**

24 Plaintiff, the People of the State of California, ex rel. Maureen F. Gorsen, Director of
25 the California Department of Toxic Substances Control ("Department"), and Defendant Kyocera
26 America, Inc. ("Kyocera"), having consented to the entry of this Final Consent Judgment and
27 Injunction Pursuant to Stipulation ("Judgment") prior to the taking of any proof and without trial
28 or adjudication of any fact or law herein; and

1 The Court having considered the pleadings, which include, without limitation, the
2 Complaint, the Answer, the parties' Stipulation for Entry of Final Consent Judgment, and the
3 proposed Final Consent Judgment and Injunction Pursuant to Stipulation;

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:**

5 **JURISDICTION AND VENUE**

6 1. Jurisdiction exists over this matter pursuant to Health and Safety Code sections
7 25181, 25189 and 25189.2. Venue is proper pursuant to Health and Safety Code section 25183.

8 **APPLICABILITY**

9 2. The provisions of this Judgment shall apply to and be binding upon Kyocera
10 and any successor entity, and upon the Department and any successor agency of the Department
11 that may have responsibility for and jurisdiction over the subject matter of this Judgment.

12 2.1. The provisions of this Judgment shall apply to Kyocera's facility located at
13 8611 Balboa Avenue, San Diego, California ("Facility" or "Site").

14 **INJUNCTION AND SCHEDULE FOR COMPLIANCE**

15 3. Application for Hazardous Waste Treatment Permit

16 3.1. Within ninety (90) calendar days from the entry of this Judgment, Kyocera shall
17 submit to the Department a complete application for a Standardized Hazardous Waste Treatment
18 Permit ("Permit Application") for the treatment activities and materials identified in Attachment
19 "1" to this Judgment. The Department agrees that within thirty (30) days of receipt of the Permit
20 Application, the Department's permitting staff, in consultation with others, as necessary, will
21 review the Permit Application and any supporting documentation to determine whether the
22 Permit Application is considered complete by the Department. The Permit Application shall be
23 considered "complete" when the Department receives an application form and any supplemental
24 information and documentation which are required and completed to the Department's
25 satisfaction as required by applicable law, and the Department notifies Kyocera in writing that the
26 Permit Application is complete. The completeness of the Permit Application shall be judged
27 independently of the status of any other permit application or permit for the same Facility or
28 activity. In submitting its Permit Application to the Department, Kyocera agrees to comply with

1 the permit application requirements as set forth in the California Code of Regulations, title 22,
2 division 4.5, chapter 20, section 66270.10 et seq.

3 3.2. In 1992, the Wright Polanco Lempert Hazardous Waste Treatment Permit
4 Reform Act (Stats. 1992, c. 1345 (A.B. 1772)) established a five tiered program for authorizing
5 hazardous waste treatment in California. The tiers include "Full Permit," "Standardized Permit,"
6 "Permit by Rule (PBR)," "Conditionally Authorized," and "Conditionally Exempt." The five tiers
7 are arranged in descending order of regulatory oversight.

8 3.3. The Department acknowledges that Kyocera is submitting the Permit
9 Application referenced in paragraph 3.1 above, at the Department's request as a means of
10 presenting information to the Department for its determination regarding the level of
11 authorization, if any, that is required by law to conduct the activities using the materials identified
12 in Attachment 1. The Department and Kyocera agree to work cooperatively to discuss and
13 evaluate the Permit Application and supporting information. The Department and Kyocera
14 anticipate that this process may take several months to complete, but an agreement may be
15 reached regarding the authorization or exclusion of individual activities that can be implemented
16 immediately. If authorization is required, Kyocera seeks to obtain authorization pursuant to the
17 lowest regulatory oversight tier that is available under the Department's five-tiered program
18 referenced in paragraph 3.2 above, or other applicable laws. The Department also acknowledges
19 that Kyocera is providing the information required by the Department in the form of the Permit
20 Application in order to facilitate the Department's determination regarding the level of
21 authorization that is required by law.

22 3.4. If, after issuance of a final permit decision by the Department, a Standardized
23 Hazardous Waste Treatment Permit or other form of authorization is issued by the Department to
24 Kyocera for any of the activities and materials that are identified in Attachment 1, Kyocera agrees
25 to immediately comply with all permit or other authorization requirements as required by law.
26 Kyocera does not waive any right provided by law to appeal a final permit decision by the
27 Department and nothing in this Judgment shall restrict Kyocera from availing itself of established
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1 permit modification procedures or final permit decision appeal procedures that are contained in
2 California Code of Regulations, title 22, division 4.5, chapter 21.

3 3.5. At the same time it submits the Permit Application, Kyocera shall pay the
4 Department a fee as the permit application fee associated with the Permit Application review,
5 processing, and determination in accordance with the Department's Fee Summary for calendar
6 year 2009. If, after review of Kyocera's Permit Application the Department determines that
7 authorization is required under a higher permit tier (i.e., a full RCRA permit), Kyocera agrees to
8 pay the Department the net difference between the Standardized Permit Application fee and the
9 higher permit application fee as determined by the Department's Fee Summary for calendar year
10 2009, or whichever other year applies.

11 4. Waste Analysis Plan

12 Within sixty (60) calendar days from entry of this Judgment, Kyocera shall develop,
13 implement, and comply with a written waste analysis plan meeting the requirements of California
14 Code of Regulations, section 66265.13. Kyocera shall maintain a copy of the waste analysis plan
15 required herein at the Facility and shall make it available upon request by the Department and the
16 County of San Diego Department of Environmental Health, Hazardous Materials Division
17 (hereinafter referred to as the "San Diego County Certified Unified Program Agency" or "San
18 Diego County CUPA"). After sixty (60) calendar days from entry of this Judgment and within
19 ten (10) calendar days of the Department's subsequent written request, Kyocera shall provide the
20 Department the written waste analysis plan required by this paragraph. Within sixty (60) days
21 after receipt of Kyocera's written waste analysis plan, the Department shall review that plan to
22 determine whether it meets applicable statutory and regulatory requirements, and notify Kyocera
23 in writing of the Department's determination.

24 5. Hazardous Waste Determination

25 Within sixty (60) calendar days from entry of this Judgment, Kyocera shall identify
26 all wastes generated, stored, treated, and/or otherwise managed at the Facility as defined in Health
27 and Safety Code section 25124 and California Code of Regulations, title 22, section 66261.2, and
28 shall determine if the wastes are hazardous pursuant to California Code of Regulations, title 22,

1 section 66262.11. Kyocera shall identify in writing and continually keep current a list of all
2 hazardous wastes generated, stored, treated, and/or otherwise managed at the Facility. Kyocera
3 shall maintain a copy of the hazardous waste list required herein at the Facility and shall make it
4 available upon request by the Department and the San Diego County CUPA.

5 6. Labeling of Hazardous Waste Containers and Portable Tanks

6 Effective on the date of entry of this Judgment, Kyocera shall identify and label all
7 containers and portable tanks used to store, treat, or otherwise manage hazardous waste with the
8 words "Hazardous Waste," the composition and physical state of the waste, the hazardous
9 properties, the initial date of accumulation of hazardous waste, and the name and address of the
10 generator in compliance with California Code of Regulations, title 22, section 66262.34(f).

11 7. Identification of Satellite Accumulation Area(s)

12 Within sixty (60) calendar days from entry of this Judgment, Kyocera shall identify in
13 writing and continually keep current a list of all satellite accumulation areas used to store
14 hazardous wastes pursuant to California Code of Regulations, title 22, section 66262.34(e).
15 Kyocera shall maintain a copy of the list required herein at the Facility and shall make it available
16 upon request by the Department and the San Diego County CUPA.

17 8. Certified Tank Assessment

18 Within sixty (60) calendar days from entry of this Judgment, Kyocera shall have and
19 maintain a current and adequate tank assessment performed for each tank and tank system used at
20 the Facility to accumulate, store, transfer, treat, and/or otherwise manage hazardous waste. Each
21 tank assessment shall be conducted by an independent, qualified, professional engineer, registered
22 in California, in accordance with California Code of Regulations, title 22, sections 66265.191 and
23 66265.192. Kyocera shall maintain a copy of the current certified tank assessment required
24 herein at the Facility and shall make it available upon request by the Department and the San
25 Diego County CUPA. After sixty (60) calendar days from entry of this Judgment and within ten
26 (10) calendar days of the Department's subsequent written request, Kyocera shall provide the
27 Department the written certified tank assessment required by this paragraph. Within sixty (60)
28 days after receipt of Kyocera's written certified tank assessment, the Department shall review that

1 written tank assessment to determine whether it meets applicable statutory and regulatory
2 requirements, and notify Kyocera in writing of the Department's determination.

3 9. Secondary Containment

4 Within sixty (60) calendar days from entry of this Judgment, Kyocera shall provide
5 adequate secondary containment assessment for each tank and each tank system used at the
6 Facility to store, treat, and/or otherwise manage hazardous waste. Kyocera shall provide and
7 maintain adequate secondary containment for each tank and tank system as required by law. As
8 part of the tank integrity assessment required by paragraph 8 above, the secondary containment
9 assessment shall be certified by an independent, qualified, professional engineer registered in
10 California, in compliance with California Code of Regulations, title 22, section 66265.193. After
11 sixty (60) calendar days from entry of this Judgment and within ten (10) calendar days of the
12 Department's subsequent written request, Kyocera shall provide the Department the written
13 certified tank assessment required by this paragraph. Within sixty (60) days after receipt of
14 Kyocera's written certified tank assessment that addresses secondary containment, the
15 Department shall review that written tank assessment to determine whether it meets applicable
16 statutory and regulatory requirements, and notify Kyocera in writing of the Department's
17 determination.

18 10. Daily Tank Inspections

19 Effective on the date of entry of this Judgment, Kyocera shall prepare and implement
20 a written daily tank inspection plan in compliance with California Code of Regulations, title 22,
21 section 66265.195(a) and (c), and shall maintain an accurate log of the daily inspections
22 conducted, including corrective actions taken. Kyocera shall make the written daily inspection
23 plan and log of daily inspections available upon request by the Department and the San Diego
24 County CUPA. Within ten (10) calendar days of the Department's written request, Kyocera shall
25 provide the Department the written inspection plan and/or log of daily inspections required by
26 this paragraph. Within sixty (60) days after receipt of Kyocera's written inspection plan and/or
27 log of daily inspections, the Department shall review those documents to determine whether they
28

1 meet applicable statutory and regulatory requirements, and notify Kyocera in writing of the
2 Department's determination.

3 11. Weekly Inspection of Containers and Portable Tanks

4 Effective on the date of entry of this Judgment, Kyocera shall prepare and implement
5 a written weekly inspection program for inspecting all containers and portable tanks, and shall
6 maintain a log of all inspections conducted and corrections made, in compliance with California
7 Code of Regulations, title 22, section 66265.174. Kyocera shall make the log of inspections
8 available upon request by the Department and the San Diego County CUPA. Within ten (10)
9 calendar days of the Department's written request, Kyocera shall provide the Department the
10 written inspection plan and/or log of daily inspections required by this paragraph. Within sixty
11 (60) days after receipt of Kyocera's written inspection plan and/or log of weekly inspections, the
12 Department shall review those documents to determine whether they meet applicable statutory
13 and regulatory requirements, and notify Kyocera in writing of the Department's determination.

14 12. Inspection of Emergency and Safety Equipment

15 Effective on the date of entry of this Judgment, Kyocera shall prepare and implement
16 a written inspection program for inspecting all monitoring equipment, safety and emergency
17 equipment, security devices, and operating and structural equipment (such as dikes and sump
18 pumps) that are important to preventing, detecting, or responding to environmental or human
19 health hazards, in compliance with California Code of Regulations, title 22, section 66265.15, and
20 shall maintain a log of all such inspections. Kyocera shall also test and maintain all Facility
21 communications or alarm systems, fire protection equipment, spill control equipment, and
22 decontamination equipment, where required, as necessary to assure its proper operation in time of
23 emergency in compliance with California Code of Regulations, title 22, section 66265.33.
24 Kyocera shall make the written inspection program and/or log of inspections available upon
25 request by the Department and the San Diego County CUPA. Within ten (10) calendar days of
26 the Department's written request, Kyocera shall provide the Department the written inspection
27 plan and/or log of daily inspections required by this paragraph. Within sixty (60) days after
28 receipt of Kyocera's written inspection plan and/or log of inspections, the Department shall

1 review those documents to determine whether they meet applicable statutory and regulatory
2 requirements, and notify Kyocera in writing of the Department's determination.

3 13. Interim Financial Assurance:

4 Within sixty (60) days from the entry of this Judgment, Kyocera shall provide interim
5 Financial Assurance to the Department for closure and post closure care costs associated with the
6 closure of the Facility. The interim Financial Assurance for closure costs shall be in the amount
7 of \$138,000.00 in a form acceptable to the Department, and shall meet the requirements of
8 California Code of Regulations, title 22, division 4.5, chapter 15, articles 7 and 8. If a closure
9 plan(s) and/or post closure care plan(s) is submitted to the Department pursuant to the Permit
10 Application process referenced in paragraph 3.1 above, the interim Financial Assurance shall be
11 adjusted to reflect the more detailed cost estimate(s) contained in said plan(s). The Financial
12 Assurance shall remain in effect until a replacement mechanism is approved by the Department
13 and implemented by Kyocera within the time as required by the Department.

14 14. Training

15 Within thirty (30) calendar days from entry of this Judgment, Kyocera shall develop,
16 implement, and comply with a written training plan for all workers, including contract employees
17 who are involved with the storing, handling, treating and removal of hazardous waste, meeting
18 the requirements of California Code of Regulations, title 22, section 66265.16. The training plan
19 shall be submitted to the Department and the San Diego County CUPA within sixty (60) days
20 from the entry of this Judgment. If Kyocera's employees require additional training to meet the
21 plan, this training shall be provided and completed within ninety (90) days from the entry of this
22 Judgment. Within sixty (60) days after receipt of Kyocera's written training plan, the Department
23 shall review the plan to determine whether it meets applicable statutory and regulatory
24 requirements, and notify Kyocera in writing of the Department's determination.

25 15. Operating Record

26 Upon entry of this Judgment, Kyocera shall comply with the requirements of
27 California Code of Regulations, title 22, division 4.5, chapter 15, article 5 (manifest system,
28 recordkeeping, and reporting), sections 66265.70 through 66265.78, and, if applicable under

1 Permit By Rule authorization, section 67450.3. Within sixty (60) days from entry of this
2 Judgment, Kyocera shall compile all existing records, as identified and required by the above
3 cited regulations, of previous activities that would have been required to be kept by Kyocera, and
4 incorporate those records into the current operating record, to the extent possible.

5 16. Environmental Audit

6 Within twelve (12) months from the entry of this Judgment, Kyocera shall initiate and
7 cause to be performed a third party hazardous waste environmental audit to be conducted at the
8 Facility. The environmental audit shall include, at a minimum, an analysis of compliance with all
9 California Hazardous Waste Control Law statutory and regulatory provisions cited in the
10 Complaint. Kyocera shall notify the Department of any discovered violations within ten (10)
11 calendar days of the completion of the audit, or more promptly as otherwise required by
12 applicable state or federal law. Within thirty (30) calendar days from the completion of the
13 environmental audit required by this Judgment, Kyocera shall provide the Department with an
14 environmental audit report(s) that describes the findings, analysis, conclusions, and
15 recommendations resulting from the environmental audit conducted on behalf of Kyocera and the
16 measures taken by Kyocera to correct any violations. Kyocera shall promptly correct any
17 violations discovered during the environmental audit as required by federal, state, and local law.

18 **MONETARY SETTLEMENT REQUIREMENTS**

19 17. Civil Penalty

20 Kyocera shall be liable to the Department for the total sum of \$1,400,000.00 as
21 follows: (a) \$1,038,000.00 of the total amount due to the Department shall be designated as civil
22 penalties under the Hazardous Waste Control Law, Health and Safety Code section 25189.2 and
23 shall be paid to the Department in accordance with the instructions contained in paragraph 17.1
24 below; (b) \$162,000.00 of the total amount due to the Department shall be designated as
25 administrative costs and paid to the Department within thirty (30) days from the date of entry of
26 this Judgment in accordance with the instructions contained in paragraph 17.1; and (c)
27 \$200,000.00 of the total amount due shall be designated and used for a Supplemental
28 Environmental Project (SEP) in accordance with paragraph 18 below.

1 17.1. Kyocera shall pay to the Department the total sum of \$1,200,000.00, as
2 specified above in paragraph 17, within thirty (30) days from the entry of this Judgment. In
3 complying with this requirement, Kyocera's check shall identify the name and case number "37
4 2007 0007 4954-CU MC CTL" of this matter, be made payable to the "Department of Toxic
5 Substances Control," and shall be delivered to:

6
7 Department of Toxic Substances Control
8 Accounting Office
9 1001 I Street
10 P.O. Box 806
11 Sacramento, California 95812-0806

12 A photocopy of each check shall be sent to:

13 Charles A. McLaughlin, Chief
14 State Oversight and Enforcement Branch
15 Enforcement and Emergency Response Program
16 Department of Toxic Substances Control
17 8800 Cal Center Drive
18 Sacramento, California 95826-3200

19 and

20 Edward H. Ochoa, Deputy Attorney General
21 Office of the Attorney General
22 110 West "A" Street, 11th Floor
23 P.O. Box 85266
24 San Diego, California 92186-5266

25 18. Supplemental Environmental Project

26 The Department shall give Kyocera a credit in the amount of \$200,000.00 towards the
27 \$1,400,000.00 total amount due to the Department for the following Supplemental Environmental
28 Project: Kyocera shall pay \$200,000.00 to the San Diego River Conservancy to support wireless
river monitoring to be conducted by the San Diego River Research Center. These funds shall be
used for the purposes described in Attachment "2". Within thirty (30) days from entry of this

1 Judgment, Kyocera shall issue a check in the amount of \$200,000.00 made payable to "San Diego
2 River Conservancy." Kyocera's SEP check shall also identify the name and case number "37
3 2007 0007 4954-CU MC CTL" of this matter and the check shall be delivered to:

4
5 Mr. Michael Nelson
6 Executive Officer
7 San Diego River Conservancy
8 1350 Front Street, Suite 3024
9 San Diego, California 92101

10 With a copy of each check sent to:

11 Charles A. McLaughlin, Chief
12 State Oversight and Enforcement Branch
13 Enforcement and Emergency Response Program
14 Department of Toxic Substances Control
15 8800 Cal Center Drive
16 Sacramento, California 95826-3200

17 Edward H. Ochoa, Deputy Attorney General
18 Office of the Attorney General
19 110 West "A" Street, 11th Floor
20 P.O. Box 85266
21 San Diego, California 92186-5266

22 18.1. In the event that Kyocera fails to make the payment as specified in paragraph 18
23 above, Kyocera shall immediately pay to the Department as civil penalties the sum of
24 \$200,000.00 in accordance with the payment instructions in paragraph 17.1 above.

25 **ADDITIONAL STIPULATED PENALTIES**

26 **FOR FAILURE TO COMPLY WITH PAYMENT SCHEDULE**

27 19. If Kyocera fails to meet the payment deadlines for the payments required by
28 paragraphs 17 through 18.1, Kyocera shall be obligated to pay the Department an additional
amount of five hundred dollars (\$500.00) per day, for each day following the payment deadline
during which Kyocera has not paid the amount owed.

OTHER PROVISIONS

20. Retention of Jurisdiction

The Court shall retain jurisdiction of this matter to implement this Judgment.

1 21. Enforcement of Judgment

2 Either party may, by motion or order to show cause before the Superior Court of San
3 Diego County, enforce the terms and conditions contained in this Judgment. Except as otherwise
4 provided in the Stipulation and this Judgment, where a failure to comply with this Judgment
5 constitutes future violations of the Hazardous Waste Control Law, Health and Safety Code
6 section 25100 et seq., or other laws, the Department is not limited to enforcement of this
7 Judgment, but may seek in another action, subject to satisfaction of any procedural requirements,
8 including notice requirements, whatever fines, costs, fees, penalties, or remedies are provided by
9 law for failure to comply with the Hazardous Waste Control Law or other laws. However, the
10 rights of Kyocera to defend itself in law or equity shall not be waived, abrogated or reduced in
11 any fashion, except as provided in this Judgment or the Stipulation, and Kyocera shall be entitled
12 to raise any and all applicable defenses, rights and remedies.

13 22. Modification

14 This Judgment may be modified from time to time by express written agreement of
15 the parties, with the approval of the Court, or in accordance with the law if approved by the
16 parties.

17 23. Imminent and Substantial Endangerment to Public Health or Environment

18 Nothing in this Judgment shall in any way limit the Department's legal authority to
19 direct or order all actions necessary to protect public health or welfare or the environment or to
20 remedy or prevent an actual or threatened release of hazardous waste or constituents from
21 Kyocera's facility that could cause an imminent and substantial endangerment to the public health
22 or to the environment.

23 24. Reservation of Rights

24 As provided in paragraph 8.1 of the Stipulation, Kyocera does not waive any
25 contention that the materials and activities identified in Attachment 1 may be subject to any
26 exemption(s) or exclusion(s) from the definition of, or regulation as, "hazardous wastes" pursuant
27 to Health and Safety Code section 25143.2(c)(2), or any other applicable law. By entering into
28

1 the Stipulation and fulfilling its obligation under this Judgment, Kyocera is not admitting that the
2 materials described in Attachment 1 are hazardous wastes.

3 25. Acknowledgment of Partial Satisfaction of Judgment

4 If Kyocera provides the Department with satisfactory evidence of compliance with
5 the non-continuing injunctive obligations contained within paragraphs 4 through 18.1 of this
6 Judgment, Kyocera may, within one hundred fifty (150) days from the effective date of this
7 Judgment, request in writing that the Department execute an acknowledgment of partial
8 satisfaction of judgment, which may be filed with the Court by Kyocera, for those discrete and
9 non-continuing injunctive obligations that have been satisfactorily performed and completed as
10 determined in the sole discretion by the Department and in accordance with the law. However,
11 this does not relieve Kyocera of any continuing obligation to comply with any applicable
12 requirements under the HWCL or California Code of Regulations, title 22, division 4.5,
13 including, without limitation, any conditions required by any hazardous waste permit issued to
14 Kyocera.

15 26. Entry of Judgment

16 The Clerk of the Court is ordered to enter this Judgment forthwith.

17
18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

19
20 Dated: _____

21 Judge of the Superior Court
22
23
24
25
26
27

28 SD2005500361

ATTACHMENT 1

ATTACHMENT "1" to Final Consent Judgment and Injunction

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>
<u>Material:</u>	<u>Hazardous Characteristics & Concentrations for each activity as identified Column 4:</u>	<u>Volume or amount per month for each activity as identified Column 4:</u>	<u>Activity:</u>	<u>Activity Location:</u>
Used immersion gold, electroless gold, and electroplating baths	(1a1) CN concentration not to exceed 50,000 mg/l	(1a1) 1,500 gallons/month	(1a1) Baths transferred to 5 gallon containers, cooled, pH adjusted to 12, filtration, transferred to 55 gallon containers and next to reclaim room for gold removal;	(1a1) Manual Plating room
	(1a2) CN concentration not to exceed 50,000 mg/l	(1a2) 1,500 gallons (occurs only every 4-5 years, not monthly)	(1a2) Cooled, pH adjusted to 12, , transferred to 55 gallon containers and next to reclaim room for gold removal;	(1a2) Auto Plating room
	(1b) CN concentration not to exceed 50,000 mg/l	(1b) 1,500 gallons/month	(1b) Electrowinning to remove gold in open tanks (2 Ionnet Units) (incl. addition of "Glyoxal" as part of KAI's electrowinning);	(1b) North Reclaim Room
	(2) CN concentration not to exceed 50,000 mg/l	(2) 1,500 gallons/month	(2) Batch CN treatment in open tank (Tank "Sii") after dilution to 5,000 mg/l CN;	(2) Waste Water Treatment Plant
	(3) CN concentration not to exceed 5,000 mg/l	(3) 1,500 gallons/month Total 4,500 gallons/mo	(3) pH adjustment & CN destruction in continuous waste water treatment system in open tanks (MOD-14 and MOD-15);	(3) Waste Water Treatment Plant

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)(A)

<u>Column 1</u> <u>Material:</u>	<u>Column 2</u> <u>Hazardous Characteristics & Concentrations for each activity as identified Column 4:</u>	<u>Column 3</u> <u>Volume or amount per month for each activity as identified Column 4:</u>	<u>Column 4</u> <u>Activity:</u>	<u>Column 5</u> <u>Activity Location:</u>
Used parts cleaning baths from electroless and electroplating processes (Rack Stripping Solution)	<p>(1a1) CN concentration not to exceed 50,000 mg/l</p> <p>(1a2) CN concentration not to exceed 50,000 mg/l</p> <p>(1b) CN concentration not to exceed 50,000 mg/l</p> <p>(2) CN concentration not to exceed 50,000 mg/l</p> <p>(3) CN concentration not to exceed 5,000 mg/l</p> <p>(4) CN concentration not to exceed 5,000 mg/l</p>	<p>(1a1) 2,500 gallons/month</p> <p>(1a2) 2,500 gallons/month</p> <p>(1b) 2,500 gallons/month</p> <p>(2) 2,500 gallons/month</p> <p>(3) 2,500 gallons/month</p> <p>(4) 2,500 gallons/month</p> <p>Total is 15,000 gallons/month</p>	<p>(1a1) Baths transferred to 5 gallon containers, cooled, pH adjusted to 12, filtration, transferred to 55 gallon containers and next to reclaim room for use as rack stripping solution component.</p> <p>(1a2) pH adjusted to 12, transferred to 55 gallon containers and next to reclaim room for use as rack stripping solution component.</p> <p>(1b) Used as component of rack-stripping solution in open heated (180° F) rack stripping tank. Other components include CN rinsewaters, sodium hydroxide, and 9025 solution and clean water if needed.</p> <p>(2) Electrowinning in open tanks (2 Ionnet Units) (incl. addition of Glyoxal as part of KAI's electrowinning).</p> <p>(3) Batch CN treatment in open tank (Tank "Sii").</p> <p>(4) pH adjustment & CN destruction in continuous waste water treatment system in open tanks (MOD-14 and MOD-15).</p>	<p>(1a1) Manual Plating room</p> <p>(1a2) Auto Plating room</p> <p>(1b) North Reclaim Room</p> <p>(2) North Reclaim Room</p> <p>(3) Waste Water Treatment Plant</p> <p>(4) Waste Water Treatment Plant</p>
Non-CN rinse waters (wet process rooms)	(1) metals (nickel not to exceed 2,000 mg/l)	(1) 2,400,000 gallons/month	(1) pH adjustment which causes dissolved nickel to fall out of solution.	(1) Waste Water Treatment Plant

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)(A)

<u>Column 1</u> <u>Material:</u>	<u>Column 2</u> <u>Hazardous Characteristics & Concentrations for each activity as identified Column 4:</u>	<u>Column 3</u> <u>Volume or amount per month for each activity as identified Column 4:</u>	<u>Column 4</u> <u>Activity:</u>	<u>Column 5</u> <u>Activity Location:</u>
Metal hydroxide sludge	(1) metals (nickel not to exceed 600,000 mg/l)	(1) 4,000 pounds/month	(1) Sludge dryer using refrigeration (no addition of absorbent). Please note sludge will be 100% recycled offsite to recover the nickel	(1) Waste Water Treatment Plant
Empty Drums (caustics & acids)	(1) metals concentration in residue not to exceed 15,000 mg/l (2) metals concentration in rinsewater not to exceed 5,000 mg/l	(1) 50 drums/month (2) rinses from 50 drums/month	(1) Drum rinsing at S-4 and S-5 (no crushing). (2) Rinsate to continuous waste water treatment system.	(1) S-4 and S-5 are two treatment units located in the Waste Water Treatment Plant (2) Waste Water Treatment Plant
Empty Drums (cyanides)	(1a) CN concentration not to exceed 5,000 mg/l (1b) CN concentration not to exceed 5,000 mg/l	(1a) 50 drums/month (1b) 50 drums/month	(1a) Drum rinsing (Sump S-12) (1b) Rinsate to continuous waste water treatment system in open tanks (MOD-14 and MOD-15).	(1) North Reclaim Room (1b) Waste Water Treatment Plant
Equipment rinsing (racks/hoses/ or pumps)	(1a) CN concentration not to exceed 5,000 mg/l (1b) CN concentration not to exceed 5,000 mg/l	(1a) 5,000 gallons/month (1b) 5,000 gallons/month	(1a) Equipment rinsing (Sump S-12) (1b) Rinsate to continuous waste water treatment system in open tanks (MOD-14 and MOD-15).	(1a) North Reclaim Room (1b) Waste Water Treatment Plant

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)((A)

<u>Column 1</u> <u>Material:</u>	<u>Column 2</u> <u>Hazardous Characteristics & Concentrations for each activity as identified Column 4:</u>	<u>Column 3</u> <u>Volume or amount per month for each activity as identified Column 4:</u>	<u>Column 4</u> <u>Activity:</u>	<u>Column 5</u> <u>Activity Location:</u>
Nickel plating baths (electroless bath)	(1) Nickel concentration not to exceed 15,000 mg/l, Pb not to exceed 10 mg/l (2) Nickel concentration not to exceed 15,000 mg/l	(1) 1,500 gallons/month (2) 1,500 gallons/month Total is 3,000 gallons/mo	(1) Batch treatment by addition of sodium hydroxide in open tank (Tank "Mod-12"). (2) Waste water metered into non-CN rinsewater stream for polishing in continuous waste water treatment system.	(1) Waste Water Treatment Plant (2) Waste Water Treatment Plant
Corrosive baths (e.g., cleaners, acids, tin-lead & copper plating, or nickel plating)	(1) metals (not to exceed 2,000 mg/l) pH<2 or >12.5	(1) 3,500 gallons/month	(1) Metered to the continuous waste water treatment system.	(1) Waste Water Treatment Plant

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)((A)

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>
<u>Material:</u>	<u>Hazardous Characteristics & Concentrations for each activity as identified Column 4:</u>	<u>Volume or amount per month for each activity as identified Column 4:</u>	<u>Activity:</u>	<u>Activity Location:</u>
CN dragout from auto gold plating line (from tank SPA)	<p>(1) CN concentration not to exceed 5,000 mg/l</p> <p>(2) CN concentration not to exceed 5,000 mg/l</p> <p>(3) CN concentration not to exceed 5,000 mg/l</p> <p>(4) CN concentration not to exceed 5,000 mg/l</p>	<p>(1) 5,000 gallons/month</p> <p>(2) 5,000 gallons/month</p> <p>(3) 5,000 gallons/month</p> <p>(4) 5,000 gallons/month</p> <p>Total amount not to exceed 20,000 gallons/mo</p>	<p>(1) Used as component of rack-stripping solution in open heated (180° F) rack stripping tank.</p> <p>(2) Electrowinning in open tanks (2 Ionnet Units) (incl. addition of Glyoxal as part of KAI's electrowinning).</p> <p>(3) Batch treatment in open tank (Tank "Sii").</p> <p>(4) pH adjustment & CN destruction in continuous waste water treatment system in open tanks (MOD-14 and MOD-15)..</p>	<p>(1) North Reclaim Room</p> <p>(2) North Reclaim Room</p> <p>(3) Waste Water Treatment Plant</p> <p>(4) Waste Water Treatment Plant</p>

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)((A)

<u>Column 1</u> Material:	<u>Column 2</u> Hazardous Characteristics & Concentrations for each activity as identified Column 4:	<u>Column 3</u> Volume or amount per month for each activity as identified Column 4:	<u>Column 4</u> Activity:	<u>Column 5</u> Activity Location:
CN rinse water (Auto Gold Plating Lines)	(1) CN concentration not to exceed 5,000 mg/l (2) CN concentration not to exceed 5,000 mg/l (3) CN concentration not to exceed 5,000 mg/l (4) CN concentration not to exceed 5,000 mg/l	(1) 10,000 gallons/month (2) 520,000 gallons/month (3) 520,000 gallons/month (4) 520,000 gallons/month Total is 530,000 gallons/month	(1) Gold Bug Unit (addition of sodium hypochlorite); and/or (2) Ion Exchange Units. (3) Electrolytic recovery unit (4) pH adjustment and & CN destruction in continuous waste water treatment system in open tanks (MOD-14 and MOD-15).	(1) Auto Gold Plating Room (2) Auto Gold Plating Room (3) Tank E -outside the Auto Gold Plating room (same area of the tanks SPA, SPB, and SPD) (4) Waste Water Treatment Plant
Ferric cyanide dragout	(1) CN concentration not to exceed 5,000 mg/l (2) CN concentration not to exceed 5,000 mg/l	(1) 5000 gallons/month (2) 5000 gallons/month Total is 10,000 gallons/month	(1) Batch treatment in open tank (Tank "Sii") using bleach and caustic soda. (2) pH adjustment & CN destruction in open tanks in continuous waste water treatment system in open tanks (MOD-14 and MOD-15).	(1) Waste Water Treatment Plant (2) Waste Water Treatment Plant

Note: For all Cyanide Treatments under PBR (CCR, T22, § 67450.11(d):

- Comply with Best Management Requirements
- Employee training (Initial and annual training to employees, who handle cyanide process solutions, cyanide rinse waters, or manage cyanide waste)
- Evaluate cyanide alternatives every 4 years
- Written approval from the agency operating the POTW receiving the facility's discharges required by section 67450.3, §§ (a)(7)(A) or (c)(5)((A)

ATTACHMENT 2

ATTACHMENT "2" TO FINAL CONSENT JUDGMENT AND INJUNCTION

SUPPLEMENTAL ENVIRONMENTAL PROJECT Case No. 37-2007-00074954-CU-MC-CTL

The SEP funds in the amount of \$200,000 shall be used for the purchase and installation of four wireless environmental sensors at a cost of \$41,887.84 per unit and associated equipment (see attached itemized cost per unit) for the San Diego River Watershed Data Collection and Restoration Program ("Program") to assess, monitor and address the long-term impacts of pollutants to public health and water quality in the San Diego River Watershed. The remainder of funds shall be used for ongoing maintenance of wireless environmental sensors.

SEP Description:

At the first meeting of its governing Board following receipt of the designated funds, the San Diego River Conservancy shall approve a grant of the designated funds for Program purposes to San Diego State University (SDSU) for the purchase, installation, and maintenance of the sensors and equipment. SDSU shall use the funds for establishing a data collection and dissemination system that will inform environmental protection regulators and water resource managers of current and changing environmental conditions, allowing them to base decisions on real-time data and on sound science. SDSU will also use data generated from the project to enhance classroom instruction in environmental curricula as well as to assist community organizations with resource management decisions in an urban environment.

As part of the terms of the grant, SDSU will be responsible for preparing an Annual Report that will be made available to environmental regulators, including the Department of Toxic Substances Control, and watershed managers, summarizing findings related to the project and associated data collection activities. If, during the course of monitoring, data suggest that a release or other source of contaminants is impacting the watershed, SDSU shall either (1) investigate to determine the cause, and/or (2) immediately report this finding to environmental regulators and watershed managers.

San Diego State University, the San Diego River Conservancy and the San Diego River Park Foundation partnered to create the San Diego River Research Center, which is charged with the collection, understanding, and sharing of environmental information within the San Diego River Watershed. The Research Center also works to improve the waterway's natural function in areas altered by heavy development and historical industrial sewage spills and discharges. When completed the project will consist of 23 to 25 sensors and a wireless network for transmitting monitoring data about the watershed to researchers. As part of the sensor network, basic water chemistry data, including water temperature, pH, stream flow, dissolved oxygen, turbidity, and conductivity will be collected via an online database service and georeferenced using a Geographic Information System (GIS).

SUPPLEMENTAL ENVIRONMENTAL PROJECT
Case No. 37-2007-00074954-CU-MC-CTL

Additional Terms and Conditions:

The San Diego River Conservancy or its designated grantee shall own the equipment and shall be solely responsible for all matters associated with the Program, including without limitation, project fees, expenses, and costs related to the acquisition, installation, operation, and ongoing maintenance and repair of the equipment. The San Diego River Conservancy or its designated grantee will also be responsible for any reporting obligations as detailed above.

Completion Date:

Within thirty (30) days from the date of entry of the parties' final Judgment, Kyocera shall provide the San Diego River Conservancy with the designated funds on the condition they be spent only for the specified purposes identified above.

San Diego River Research Center Project Equipment List, 2008

Cost estimate for one wireless sensor station

Communications

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	3 ea		Trango Link 45 Ethernet Radios	2200.00	6600.00
2	3 ea		Surge suppression	75.00	225.00
3	2 ea		DC - DC converter	125.00	250.00
4	1 ea		Network switch, 8 port	50.00	50.00
5	2 ea		NEMA enclosure	335.00	670.00
6	1 ea		Steel Job box	249.00	249.00
7	3 ea		PoE	50.00	150.00
8	1 ea		Galvanized steel pipe, 4" x 10;	480.00	480.00
9	1 ea		Roof mount tripod	150.00	150.00
				Tax (0.0775%)	683.86
					\$9,507.86

Sensors

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	1 ea		YSI 6600V2 water quality probe	10100.00	10100.00
2	1 ea		Serial to Ethernet converter	85.00	85.00
3	1 ea		Network camera w/ lens, mount and PoE	1600.00	1600.00
4	1 ea		Small hardened block house with pole mount	500.00	500.00
5	1 ea		Network switch, 8 port	50.00	50.00
				Tax (0.0775%)	955.96
					\$13,290.96

Relay Power

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	3 ea		PV module 120 watt	550.00	1650.00
2	1 ea		Battery enclosure	650.00	650.00
3	1 ea		Pole mount bracket	75.00	75.00
4	6 ea		12VDC battery	195.00	1170.00
5	1 ea		Charge regulator	295.00	295.00
6	1 ea		Cables, wire, surge protection, breaker panel	375.00	375.00
7	1 ea		Factory pre-assembly	350.00	350.00
				Tax (0.0775%)	353.79
					\$4,918.79

Sensor Station Power

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	1 ea		PV module 120 watt	550.00	550.00
2	1 ea		Pole mount bracket	35.00	35.00
3	2 ea		12VDC battery	195.00	390.00
4	1 ea		Charge regulator	165.00	165.00
5	1 ea		Cables, wire, surge protection, breaker panel	250.00	250.00
				Tax (0.0775%)	107.73
					\$1,497.73

Installation Materials and Consumables

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	1 ea		Chain link fence	425.00	425.00
2	1 ea		EMT and steel pipe	600.00	600.00
3	10 ea		60# concrete	2.50	25.00
4	1 ea		Wire, cables, conduit, misc. hardware	1000.00	1000.00
				Tax (0.0775%)	158.88
					\$2,208.88

Installation Labor

\$5,000.00

Total Estimated Cost

\$36,424.21

Indirect Expenses

15%

\$5,463.63

GRAND TOTAL

\$41,887.84

*Annual Maintenance and Report (for one sensor)

\$1,000 / year

DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **People of the State of California v. Kyocera America, Inc., et al.**

No.: **37-2007-00074954-CU-MC-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On **December 5, 2008**, I served the attached **STIPULATION FOR ENTRY OF FINAL CONSENT JUDGMENT AND INJUNCTION** by placing a true copy thereof enclosed in a sealed envelope with the **Fedex**, addressed as follows:

Wactor & Wick, LLP
Jon Wactor, Esq.
William Wick, Esq.
180 Grand Avenue, Suite 950
Oakland, CA 94612
Attorney for Defendant Kyocera America, Inc.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 5, 2008**, at San Diego, California.

Lynnell Bowen

Declarant


Signature